SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 318

JOHN A. BURNS, GOVERNOR OF THE STATE OF HAWAII, APPELLANT,

vs.

WILLIAM S. RICHARDSON, ET AL.

No. 323

ELMER F. CRAVALHO, ET AL., APPELLANTS,

vs.

WILLIAM S. RICHARDSON, ET AL.

No. 409

KAZUHISA ABE, ET AL., APPELLANTS,

vs.

WILLIAM S. RICHARDSON, ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF HAWAII

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[fol. 3]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

Civil No. 2308

HENRIETTA DAVIDSON HOLT, JAMES ROBINSON HOLT, CARL J. GUNTERT, ELMER G. LEEHMAN, JOHN J. MEDEIROS and WILLIAM P. LACY, Plaintiffs,

vs.

WILLIAM S. RICHARDSON, Lieutenant Governor of Hawaii, Defendant.

COMPLAINT—Filed August 13, 1964

Henrietta Davidson Holt, James Robinson Holt, Carl J. Guntert, Elmer G. Leehman, John J. Medeiros and William P. Lacy, plaintiffs, hereby file their complaint and allege that:

I

The jurisdiction of this Court is based on the Civil Rights Act, 42 USC §§ 1983, 1988. This Court has additional jurisdiction under 28 USC § 1343. Relief hereunder is further sought pursuant to the Federal Declaratory Judgment Act, 28 USC §§ 2201, 2202.

II

As appears more fully below, the plaintiffs herein seek relief consisting of interlocutory or permanent injunctions restraining the enforcement, operation or execution of certain provisions of the Constitution and statutes of the [fol. 4] State of Hawaii by the defendant State officer. Therefore, they are requesting herein the convening of a three judge District Court to grant such relief, as provided under 28 USC §§ 2281 et seq.

III

The individual plaintiffs herein are citizens, taxpayers and electors of the United States and of the State of Hawaii, and as qualified voters in said State, are entitled to vote for members of the senate and the house of representatives of the Hawaii legislature. Said plaintiffs reside in the respective senatorial and representative districts shown below, and are taxpayers and qualified voters thereof:

Plaintiff	Senatorial District	Representative District
Henrietta Davidson Holt	5th	10th
James Robinson Holt	5th	10th
Carl J. Guntert	5th	10th
Elmer G. Leehman	5th	10th
John J. Medeiros	5th	8th
William P. Lacy	4th	15th

The aforementioned plaintiffs jointly and severally bring this action on their own behalf and on behalf of all other persons, citizens, taxpayers and voters in the State of Hawaii who are similarly situated.

IV

The defendant is the duly elected, qualified and acting lieutenant governor of the State of Hawaii and as such is responsible for the supervision of elections, pursuant to § 14-8 and Chapter 11, R.L.H. 1955, as amended, including the receipt of filing of nomination papers for state officers [fol. 5] (§ 11-97, R.L.H. 1955, as amended); issuance of written notices to county clerks, designating the offices to which candidates are to be nominated at the primary election for state and county offices and the time and place at which the primary is to be held in each precinct (§ 11-93, R.L.H. 1955, as amended); transmission to county clerks of certified lists of all persons for whom nomination papers have been duly filed and who are entitled to be voted for, and the office for which each is a candidate (§ 11-98, R.L.H.

1955, as amended) and tabulation of election returns and certification of election (§ 11-70, R.L.H. 1955, as amended).

V

The plaintiffs are denied the right to due process and the equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution of the United States. They bring this action on their own behalf and on behalf of all citizens, taxpayers and qualified voters of the respective counties of the State of Hawaii, and further on behalf of all voters of said State who are similarly situated, for a declaration of their rights and a declaration of the invalidity of those sections of the Constitution of said State which apportion the election of senators and representatives in said State, and for such declaratory and injunctive relief as may be proper to assure them and all others similarly situated due process and equal protection of the laws which are now and have been for many years denied them by the defendant and his predecessors in office [fol. 6] who have complied with certain provisions of the Constitution of said State, which are violative of the Constitution of the United States, all of which are more particularly set forth hereinafter.

VI

Pursuant to the Admission Act (73 Stat. 4, as amended by 74 Stat. 422) the Constitution of the State of Hawaii as accepted, ratified and confirmed by the United States of America, has adopted the Constitution of the United States as the supreme law of the land, which includes the Fourteenth Amendment, Section 1 of which provides that no state shall deprive any person of life, liberty or property without due process of law nor deny to any person within its jurisdiction the equal protection of the laws.

VII

The Constitution of the State of Hawaii provides for a senate of 25 members, apportioned on the basis of geogra-

phy and not population, and a house of representatives of 51 members, apportioned on the basis of registered voters and not population. These provisions govern the defendant in connection with the performance by him of his official duties relating to the conduct of elections in the State. Defendant has indicated that he will comply with said provisions until he is ordered otherwise by a court of competent jurisdiction.

VIII

Sections 1 to 5 inclusive of Article III of the State Constitution provide for the composition and apportionment of the senate and house of representatives of the State [fol. 7] legislature. Said sections are set forth in Exhibit A, attached hereto and by reference made a part hereof.

A schedule of representative districts and the number of representatives from each is prescribed in Article XVI, Section 1, which is set forth in Exhibit B, attached hereto and by reference made a part hereof.

The house of representatives was apportioned in 1959 in accordance with the provisions of Article III, Section 4, and the present house is so composed. Said apportionment is indicated in the table in part XI hereinafter.

With respect to constitutional amendments affecting representation from any senatorial district, a proviso in Article XV, Section 2, paragraph 6, reads:

> "... provided, that no constitutional amendment altering this proviso or the representation from any senatorial district in the senate shall become effective unless it shall also be approved by a majority of the votes tallied upon the question in each of a majority of the counties."

IX

The apportionment plan covering both the senate and the house of representatives of the State legislature is an integrated apportionment scheme for over-all legislative

representation, and that portion of such plan covering the house of representatives is not severable from that portion covering the senate, and therefore the invalidity of the apportionment of the senate invalidates that of the house of representatives.

[fol. 8] X

The senate is apportioned as provided in Article III, Section 2 of the State Constitution. The population as of the dates indicated in each senatorial district is as follows:

Senatorial District	No. of Senators	1960 Population
1st	5	44,297
2nd	2	17,035
3rd	5	42,855
4th	5	182,307
5th	5	318,102
6th	3	28,176
Totals	25	632,772

The population figures are based on the 1960 Federal Census.

On the basis of the 1960 population data:

The lowest per capita representation is found in the 2nd senatorial district, where one senator represents 8,518 persons. The highest per capita representation is found in the 5th senatorial district, where one senator represents 63,620 persons. The population variance ratio (the number of persons represented by a senator from the 2nd, as compared to the number of persons represented by a senator from the 5th senatorial district) is 1 to 7.44.

The theoretical average number of persons represented by one senator (the quotient of the total population divided by 25) is 25,311.

In the 2nd senatorial district the number of persons represented by one senator is 16,793 *below* said average; in the 5th senatorial district the number of [fol. 9] persons represented by one senator is 38,339 *above* said average.

Districts containing 18% of the population elect a majority of the senate. The 4th and 5th senatorial districts, containing 79% of the State's population, elect 40% of the total number of senators (10 of the 25 senators). The remaining four senatorial districts, containing 21% of the State's population, elect 60% (15 of 25) of the total number of senators.

The 4th senatorial district, in which plaintiff William P. Lacy resides and is registered to vote, now has five senators. If the senate were apportioned on a population basis ($\frac{182,307}{632,772}$ x 25), said district would be entitled to seven senators.

The 5th senatorial district, in which plaintiffs Henrietta Davidson Holt, James Robinson Holt, Carl J. Guntert, Elmer G. Leehman and John J. Medeiros reside and are registered to vote, now has five senators. If the senate were apportioned on a population basis ($\frac{318,102}{632,772}$ x 25), said district would be entitled to 13 senators.

XI

The house of representatives was reapportioned in 1959 as provided in Article III, Section 4, of the State Constitution on the basis of registered voters in the 1958 general election. The apportionment of the house of representatives, the population and the number of registered voters in each representative district, as of the dates indicated, are as follows:

[fol. 10]

Representative District	No. of Rep.	1960 Population	1962 Reg. Voters	1960 Reg. Voters	1958 Reg. Voters
1st	1	5,030	2,319	2,257	2,209
2nd	3	31,553	14,706	14,036	13,836
3rd	1	7,714	3,028	2,973	2,986
4th	1	11,369	4,239	4,073	3,862
5th	1	5,666	2,902	2,720	2,641
6th	1	7,138	2,739	2,574	2,560
7th	4	35,717	15,586	14,965	14,195
8th	4	68,281	22,450	18,369	13,876
9th	2	42,816	7,973	7,410	5,929
10th	4	95,118	20,861	17,003	12,926
11th	3	57,743	14,401	12,553	10,525
12th	3	25,552	10,889	10,000	8,372
13th	2	28,592	7,260	7,807	7,621
14th	4	43,612	17,305	16,056	14,134
15th	6	61,102	28,685	25,869	21,063
16th	4	40,929	17,072	16,176	13,746
17th	4	36,664	17,428	15,880	13,455
18th	3	28,176	11,807	11,338	11,381
Totals	51	632,772	221,650	202,059	175,317

The population figures are based on the 1960 Federal Census; the registered voter figures were obtained from the lieutenant governor.

The lowest per capita representation is found in the 1st representative district, where one representative represents 5,030 persons and 2,319 registered voters (1962).

The highest per capita representation is found in the 10th representative district, where one representative represents 23,764 persons and 5,215 registered voters (1962). The population variance ratio (the number of persons represented by a representative from the 1st representative district as compared to the number of persons represented by a representative from the 10th representative district) is 1 to 4.7.

The 8th representative district, in which plaintiff John J. Medeiros resides and is registered to vote, now has four representatives. If the house were apportioned on a population basis ($\frac{68,281}{632,772} \times 51$), said district would [fol. 11] be entitled to six representatives.

The 10th representative district, in which plaintiffs Henrietta Davidson Holt, James Robinson Holt, Carl J. Guntert and Elmer G. Leehman reside and are registered to vote, now has four representatives. If the house were apportioned on a population basis ($\frac{95,118}{632,772} \times 51$), said district would be entitled to eight representatives.

XII

The provisions of the Constitution of the State of Hawaii, Article III, Sections 2, 3 and 4, and Article XVI, Section 1, violate the Fourteenth Amendment of the Constitution of the United States because the apportionment formula contained therein results, and must necessarily result, when applied to the population figures of said State in a grossly unfair weighting of both houses of the State legislature in favor of the lesser populated areas of the State. There is attached hereto, marked Exhibit "C," a table of the pertinent information as to population and apportionment, which is made a part hereof as if set forth in full.

XIII

The foregoing illustrations of the malapportionment of the senate and the house of representatives of the State [fol. 12] of Hawaii exhibit the gross over-representation of the sparsely populated areas and the gross under-representation of the more populous areas, resulting in the individual plaintiffs' votes and the votes of all other persons similarly situated suffering a debasement and dilution

by virtue of an unconstitutional apportionment of both houses of the legislature, to the denial of said individual plaintiffs and all of those similarly situated of due process of law and equal protection of the laws.

XIV

The provision in Article XV, Section 2, paragraph 6 of the State Constitution, which provides "that no constitutional amendment altering this proviso or the representation from any senatorial district in the senate shall become effective unless it shall also be approved by a majority of the votes tallied upon the question in each of a majority of the counties" is a purposeful, built-in means of perpetuating inequity in senatorial representation, to the denial of rights of plaintiffs and others similarly situated as guaranteed by the Federal Constitution.

XV

The effect of malapportionment of the senate and the house of representatives of the State of Hawaii is to limit the representation of the populous areas and to exaggerate the representation of the sparsely populated areas, to the denial of the rights of plaintiffs and those similarly situated as guaranteed by the Federal Constitution. It is apparent as a result that the plaintiffs and others similarly situated in the said State are governed by a legislature which is not a body representative of the [fol. 13] people of the State and that such control by legislators representing a minority of the people of said State conflicts with the concept of government by consent of the governed and is contrary to the prevailing philosophy of government embodied in the Tenth Amendment of the Constitution of the United States and recognized by all Anglo-Saxon jurisdictions whereby the legislature has power to make laws only because it has the power and the duty to represent the people.

XVI

The defendant unless prevented by this Court must perform the duties as he and his predecessors in office have performed those duties under the challenged constitutional provisions; and the rights of these plaintiffs and the other similarly situated citizens, taxpayers and voters of said State can only be protected by a decree of this Court declaring Article III, Sections 2, 3 and 4, Article XVI, Section 1, and the proviso at the end of the sixth paragraph in Section 2 of Article XV of said State Constitution to be unconstitutional and by enjoining the defendants from performing any acts or duties in compliance with these unconstitutional provisions.

XVII

The plaintiffs have no adequate remedy at law or otherwise. Until such time as the aforesaid provisions of the Constitution of the State of Hawaii have been declared invalid, defendant will be bound thereby and is not free to exercise any discretion to eliminate the deprivation suffered by plaintiffs.

[fol. 14] To amend the Constitution of the State of Hawaii so as to provide for a constitutionally valid apportionment scheme for the election of the members of the senate and the house of representatives of the State legislature by a constitutional convention under Article XV, Section 2 thereof, and under existing law would require an inordinate amount of time, during which plaintiffs would continue to be denied their constitutional rights. The restriction in Article XV, Section 2 of the State Constitution that no amendment altering the representation from any senatorial district shall become effective unless approved by a majority of the votes tallied in each of a majority of the counties, as a practical matter forecloses relief by constitutional amendment.

The Hawaii legislature was called into special session on July 23, 1964, by the Honorable John A. Burns, Governor

of Hawaii, and to date has not adopted a valid reapportionment plan. The Constitution of the State of Hawaii, Article III, Section 11, paragraph 3, provides for special sessions of 30 days, unless extended. The 30th day of the current special session will be August 26, 1964.

The legislature, and in particular the senate, is controlled and dominated by persons elected by a minority of the citizens as hereinabove noted who may be duly expected to preserve the status quo which perpetuates their domination.

Wherefore, the plaintiffs respectfully pray that:

1. This Court take jurisdiction of this matter; that a special three judge court be called to hear and determine this cause as provided by law in 28 USC § 2281 et seq., [fol. 15] and declare the rights of plaintiffs pursuant to 28 USC § 2201 in the premises, to-wit:

(a) That Article III, Sections 2, 3 and 4, Article XVI, Section 1, and the proviso at the end of the sixth paragraph in Section 2 of Article XV, of the Constitution of the State of Hawaii have deprived and continue to deprive the plaintiffs of liberty and property without due process of law and deprive plaintiffs of equal protection of the laws in violation of the Fourteenth Amendment of the Constitution of the United States, and are invalid; and

(b) That the State legislature, pending the adoption of an appropriate constitutional amendment, may provide for apportionment by statute, and that any apportionment law must provide for apportionment of both the senate and house of representatives of the State legislature on the basis of population.

2. Plaintiffs further pray that after hearing this action the Court grant further relief in accordance with 28 USC § 2202 as follows:

(a) (1) To enjoin the defendant from accepting nomination papers of candidates for State legislative

offices, from ordering printing of ballots for State offices and from performing any other duties relating to or affecting nomination and election for State offices, unless the State legislature shall have enacted a statute providing for a valid reapportionment plan to be applied and used in the 1964 election, which election shall be for all seats in the legislature; or

[fol. 16] (2) To require that the defendant conduct the election of 25 senators and 51 representatives for the primary and general elections scheduled for 1964 on an at-large basis, state-wide, without regard to the existing apportionment scheme; or

(3) To provide for conduct of the 1964 elections in accordance with an apportionment plan prepared by the Court in conformity with the decisions of the Supreme Court of the United States;

Provided that, if the Court determines that the 1964 elections are so imminent that effectuation of any reapportionment plan therefor would entail substantial and unreasonable difficulties, the Court may permit the 1964 elections to be held in accordance with existing constitutional provisions, notwithstanding any declaration of invalidity thereof.

(b) If the State legislature now in special session does not enact a valid reapportionment plan and if another special session is called prior to the 1964 elections and no valid reapportionment plan is then enacted, to provide appropriate relief as indicated hereinbelow.

(c) In any event, to retain jurisdiction of the cause to review whatever new apportionment system has been enacted or adopted to meet the requirements of the Fourteenth Amendment to the Constitution of the United States, and for futher hearings herein as to determination of the validity of any such new apportionment system, and in that connection, to permit the plaintiffs to amend the complaint and to pray for appropriate relief.

[fol. 17] (d) Upon failure of enactment of a valid apportionment statute or adoption of a valid amendment of the State Constitution so that the 1966 elections may be conducted in accordance with an apportionment plan that meets the requirements of the Fourteenth Amendment to the Constitution of the United States, to order that the 1966 elections be conducted in accordance with an apportionment plan prepared by the Court.

(e) To provide for such other relief as may be just, equitable and proper.

Dated: Honolulu, Hawaii, this 12th day of August, 1964.

Charles M. Tonaki, Barry J. Rubin, By Charles M. Tonaki, Counsel for Plaintiffs.

Masaji Marumoto, Associate Counsel for Plaintiffs.

[fol. 18] EXHIBIT A TO COMPLAINT

ARTICLE III

The Legislature

SECTION 1. The legislative power of the State shall be vested in a legislature, which shall consist of two houses, a senate and a house of representatives. Such power shall extend to all rightful subjects of legislation not inconsistent with this constitution or the Constitution of the United States.

SECTION 2. The senate shall be composed of twenty-five members, who shall be elected by the qualified voters of the respective senatorial districts. The districts, and the number of senators to be elected from each, shall be as follows:

First senatorial district: that portion of the island of Hawaii known as Puna, Hilo and Hamakua, five;

Second senatorial district: that portion of the island of Hawaii known as Kau, Kona and Kohala, two;

Third senatorial district: the islands of Maui, Molokai, Lanai and Kahoolawe, five;

Fourth senatorial district: that portion of the island of Oahu lying east and south of Nuuanu Street and Pali Road and the upper ridge of the Koolau Range from the Nuuanu Pali to Makapuu Point and all other islands not specifically enumerated, five;

Fifth senatorial district: that portion of the island of Oahu lying west and north of the fourth senatorial district, five; and

Sixth senatorial district: the islands of Kauai and Niihau, three.

SECTION 3. The house of representatives shall be composed of fifty-one members, who shall be elected by the qualified voters of the respective representative districts. Until the next reapportionment, the representative districts and the number of representatives to be elected from each shall be as set forth in the Schedule.

SECTION 4. On or before June 1 of the year 1959, and of each tenth year thereafter, the governor shall reapportion the members of the house of representatives in the following manner: The total number of representatives shall first be reapportioned among four basic areas, namely, (1) the island of Hawaii, (2) the islands of Maui, Molokai, Lanai and Kahoolawe, (3) the island of Oahu [fol. 19] and all other islands not specifically enumerated, and (4) the islands of Kauai and Niihau, on the basis of the number of voters registered at the last preceding general election in each of such basic areas and computed by the method known as the method of equal proportions, no basic area to receive less than one member. Upon the determination of the total number of representatives to which each basic area is entitled, such total shall be reapportioned among the one or more representative districts within each basic area on the basis of the number

of voters registered at the last preceding general election within each of such representative districts and computed by the method known as the method of equal proportions, no representative district to receive less than one member. Upon any reapportionment, should the total number of voters registered in any representative district be less than one-half of the quotient obtained by dividing the total number of voters registered in the State by the total number of members to which the house is entitled, then, as part of such reapportionment, the basic area within which such representative district lies shall be redistricted by the governor in such manner that the total number of voters registered in each new representative district therein shall be more than one-half of such quotient.

The governor shall thereupon issue a proclamation showing the results of such reapportionment, and such reapportionment shall be effective for the election of members to such house for the next five succeeding legislatures.

Original jurisdiction is hereby vested in the supreme court of the State to be exercised on the application of any registered voter, made within thirty days following the date specified above, to compel, by mandamus or otherwise, the governor to perform the above duty; and made within thirty days following the date of such proclamation, to compel, by mandamus or otherwise, the correction of any error made in such reapportionment.

SECTION 5. The members of the legislature shall be elected at general elections. The term of office of members of the house of representatives shall be two years beginning with their election and ending on the day of the next general election, and the term of office of members of the senate shall be four years beginning with their election and ending on the day of the second general election after their election.

[fol. 20] EXHIBIT B TO COMPLAINT

ARTICLE XVI

Schedule

Representative Districts

SECTION 1. As provided in Section 3 of Article III until the next reapportionment, the representative districts and the number of members to be elected from each shall be as follows:

First representative district: that portion of the island of Hawaii known as Puna, one representative;

Second representative district: that portion of the island of Hawaii known as South Hilo, four representatives;

Third representative district: that portion of the island of Hawaii known as North Hilo and Hamakua, one representative;

Fourth representative district: that portion of the island of Hawaii known as Kau and South Kona and that portion of North Kona, for convenience herein referred to as Keauhou, more particularly described as follows: from a point at the seashore between the lands of Holualoa 1 and 2 and Puapuaa 2 running northeasterly along the boundary of Holualoa 1 and 2 to Puu Laalaau; (2) easterly in a straight line to a point called "Naohueleelua" being the common corner of the lands of Puuanahulu, Kaohe and Keauhou 2nd; (3) southeasterly along the common boundary between Hamakua and North Kona districts to the summit of Mauna Loa; (4) westerly along the common boundary between Kau and North Kona districts to the easterly boundary of South Kona district; (5) northerly and westerly along the boundary between North and South Kona districts to the seashore; and (6) northerly along the seashore to the point of beginning, one representative;

Fifth representative district: that portion of the island of Hawaii known as Kohala and that portion of North

Kona not included in the fourth representative district, one representative;

Sixth representative district: the islands of Molokai and Lanai, one representative;

Seventh representative district: the islands of Maui and Kahoolawe, five representatives;

Eighth representative district: that portion of the island of Oahu known as Koolaupoko and Koolauloa, two representatives;

[fol. 21] Ninth representative district: that portion of the island of Oahu known as Waialua and Wahiawa, two representatives;

Tenth representative district: that portion of the island of Oahu known as Ewa and Waianae, two representatives;

Eleventh representative district: that portion of the island of Oahu, for convenience herein referred to as Kalihi, more particularly described as follows: from the intersection of Kalihi and Auiki Streets running westerly along Auiki Street to Mokauea Street; (2) southwesterly along Mokauea Street Extension extended to a point on the outer edge of the reef; (3) westerly along the outer edge of the reef to a point on the Moanalua-Halawa boundary; (4) northerly and northeasterly along the Moanalua-Halawa boundary to the top of Koolau Range; (5) southeasterly along the top of Koolau Range to a place called "Puu Lanihuli"; (6) southwesterly along the top of the ridge between the lands of Kalihi, Kapalama and Nuuanu to Kalihi Street; and (7) southwesterly along Kalihi Street to the point of beginning, three representatives;

Twelfth representative district: that portion of the island of Oahu, for convenience herein referred to as upper Nuuanu, more particularly described as follows: from the intersection of King and Kalihi Streets running northeasterly along Kalihi Street to the ridge between the lands of Kalihi, Kapalama and Nuuanu; (2) northeasterly along

the top of said ridge to a point on the Koolau Range called "Puu Lanihuli"; (3) easterly along the top of said Range to Pali Road at the Nuuanu Pali; (4) southwesterly along Pali Road to Nuuanu Avenue and southwesterly along Nuuanu Avenue to School Street; (5) northwesterly along School Street to the center line of the Kapalama Drainage Canal (Waikiki Branch); (6) southwesterly along said Canal to the center line of the main Kapalama Drainage Canal; (7) southwesterly along said Canal to King Street; and (8) northwesterly along King Street to the point of beginning, three representatives;

Thirteenth representative district: that portion of the island of Oahu, for convenience herein referred to as Kapalama, more particularly described as follows: from the junction of the Honolulu Harbor Channel and the reef running westerly along the outer edge of the reef to Mokauea Street Extension extended, (2) northeasterly along Mokauea Street Extension extended to Sand Island Road; (3) northeasterly along Mokauea Street Extension to Auiki Street; (4) easterly along Auiki Street to Kalihi Street; (5) northeasterly along Kalihi Street to King Street; (6) southeasterly along King Street to the center line of the main Kapalama Drainage Canal; (7) northerly along said Canal to the center line of the Kapalama Drainage Canal (Waikiki Branch); (8) northeasterly along said Canal to School Street; (9) southeasterly along School Street to Nuuanu Avenue; (10) southwesterly along Nuuanu Avenue to the sea, and (11) southwesterly along the middle of Honolulu Harbor and Honolulu Harbor Channel to the point of beginning, three representatives;

[fol. 22] Fourteenth representative district: that portion of the island of Oahu, for convenience herein referred to as Pauoa, more particularly described as follows: from the junction of the Honolulu Harbor Channel and the outer edge of the reef running northeasterly along the middle of Honolulu Harbor Channel and Honolulu Harbor to the

intersection of Queen Street and Nuuanu Avenue; (2) northeasterly along Nuuanu Avenue to Pali Road and northeasterly along Pali Road to the top of the Koolau Range at the Nuuanu Pali; (3) easterly and southerly along the top of the Koolau Range to a point called "Puu Konahuanui"; (4) southwesterly along the top of the ridge between the lands of Nuuanu, Pauoa and Manoa to a mountain peak called "Puu Ohia" or "Tantalus"; (5) southwesterly along the top of the ridge between the lands of Makiki and Kalawahine to the intersection of Nehoa Street and Lewalani Drive; (6) southerly along Lewalani Drive and Piikoi Street to Wilder Avenue; (7) easterly along Wilder Avenue to Punahou Street; (8) southerly along Punahou Street to King Street; (9) westerly along King Street to Kalakaua Avenue; (10) southerly along Kalakaua Avenue to the center line of the Ala Wai Canal; (11) westerly along said Canal and along the line of said Canal extended to the outer edge of the reef; and (12) westerly along the outer edge of the reef to the point of beginning, five representatives;

Fifteenth representative district: that portion of the island of Oahu, for convenience herein referred to as Manoa and Waikiki, more particularly described as follows: from the intersection of Kalakaua Avenue and the center line of the Ala Wai Canal running northerly along Kalakaua Avenue to King Street; (2) easterly along King Street to Punahou Street; (3) northerly along Punahou Street to Wilder Avenue; (4) westerly along Wilder Avenue to Piikoi Street; (5) northerly along Piikoi Street to Lewalani Drive; (6) northerly along Lewalani Drive to Nehoa Street; (7) northeasterly along the top of the ridge between the lands of Makiki and Kalawahine to a mountain peak called "Puu Ohia" or "Tantalus"; (8) northeasterly along the top of the ridge between the lands of Pauoa, Manoa and Nuuanu to a point on the Koolau Range called "Puu Konahuanui"; (9) southeasterly along the top of said Range to a place called "Mt. Olympus"; (10) southwesterly along the top of Waahila Ridge to the top edge of Palolo Valley; (11) south-

westerly along the top edge of said Valley to the forest reserve boundary; (12) southwesterly along the southeasterly boundary of St. Louis Heights Tract, Series 2 (File Plan 464) to the southerly boundary of said Tract 100 feet southeasterly from Alencastre Street; (13) southwesterly parallel to and 100 feet from Alencastre Street and St. Louis Drive to Waialae Avenue; (14) westerly along Waialae Avenue to Kapahulu Avenue extended; (15) southerly across Waialae Avenue and along Kapahulu Avenue to Kalakaua Avenue; (16) westerly along Kapahulu Avenue extended to the outer edge of the reef; (17) northwesterly along the outer edge of the reef to a point on the line extended of the center line of the Ala Wai Canal; and (18) easterly along said line to the point of beginning, six representatives;

[fol. 23] Sixteenth representative district: that portion of the island of Oahu, for convenience herein referred to as Kaimuki and Kapahulu, more particularly described as follows: from a point at the seacoast at a place called "Black Point" running westerly along the seacoast to Kapahulu Avenue extended to the sea; (2) easterly across Kalakaua Avenue and easterly and northerly along Kapahulu Avenue to Waialae Avenue; (3) easterly along Waialae Avenue to a point 100 feet easterly of St. Louis Drive; (4) northeasterly across Waialae Avenue then parallel to and 100 feet from St. Louis Drive and Alencastre Street to the southerly boundary of St. Louis Heights Tract, Series 2 (File Plan No. 464); (5) northeasterly along the southeasterly boundary of said Tract to the forest reserve boundary; (6) northeasterly along the top ridge of Palolo Valley to the top of Waahila Ridge; (7) northeasterly along the top of Waahila Ridge to a point on Koolau Range called "Mt. Olympus"; (8) easterly along the top of the Koolau Range to the top of the ridge between the lands of Waialae Nui and Palolo; (9) southwesterly along the top of said ridge to a place called "Kalepeamoa"; (10) southwesterly along Mauumae Ridge to Sierra Drive; (11) southwesterly

along Sierra Drive to Waialae Avenue; (12) easterly along Waialae Avenue to 13th Avenue; (13) southwesterly along 13th Avenue and Ocean View Drive to Kilauea Avenue; (14) westerly along Kilauea Avenue to Makapuu Avenue; (15) southwesterly along Makapuu Avenue to Diamond Head Road; and (16) southeasterly along Diamond Head Road to the Military Road and along the Military Road extended to the point of beginning, four representatives;

Seventeenth representative district: that portion of the island of Oahu not included in any other representative district on the island of Oahu, together with all other islands not included in any other representative district, three representatives;

Eighteenth representative district: the islands of Kauai and Niihau, four representatives.

Wherever a roadway, or the intersection of one or more roadways, is designated as a boundary in any of the above descriptions, the center line of such roadway or intersection is intended as such boundary.

[fol. 24]

EXHIBIT C TO COMPLAINT

(See opposite) ☞

[fol. 24]

EXHIBIT C TO COMPLAINT

Area and District	1960 Population*	1960 Reg. Voters**	1962 Reg. Voters**	Present No. of Legislators	Reapportionment By Method of Equal Proportions Based on: Population 1960	Reg. Voters 1960	Reg. Voters 1962
State of Hawaii	632,772	202,059	221,650	76	76	76	76
THE SENATE							
First - Hawaii	44,297	19,266	20,053	5	1	2	2
Second - Hawaii	17,035	6,793	7,141	2	1	1	1
Third - Maui	42,855	17,539	18,325	5	2	2	2
Fourth - Oahu	182,307	73,981	80,490	5	7	9	9
Fifth - Oahu	318,102	73,142	83,834	5	13	9	10
Sixth - Kauai	28,176	11,338	11,807	3	1	2	1
THE HOUSE							
First - Hawaii	5,030	2,257	2,319	1	1	1	1
Second - Hawaii	31,553	14,036	14,706	3	1	3	2
Third - Hawaii	7,714	2,973	3,028	1	1	1	1
Fourth - Hawaii	11,369	4,073	4,239	1	1	1	1
Fifth - Hawaii	5,666	2,720	2,902	1	1	1	1
Sixth - Maui	7,138	2,574	2,739	1	1	1	1
Seventh - Maui	35,717	14,965	15,586	4	3	3	3
Eighth - Oahu	68,281	18,369	22,450	4	6	5	5
Ninth - Oahu	42,816	7,410	7,973	2	3	2	2
Tenth - Oahu	95,118	17,003	20,861	4	7	4	5
Eleventh - Oahu	57,743	12,553	14,401	3	5	3	3
Twelfth - Oahu	25,552	10,000	10,889	3	2	3	3
Thirteenth - Oahu	28,592	7,807	7,260	2	2	2	2
Fourteenth - Oahu	43,612	16,056	17,305	4	4	4	3
Fifteenth - Oahu	61,102	25,869	28,685	6	5	6	7
Sixteenth - Oahu	40,929	16,176	17,072	4	3	4	4
Seventeenth - Oahu	36,664	15,880	17,428	4	3	4	4
Eighteenth - Kauai	28,176	11,338	11,807	3	2	3	3

Source: Department of Planning and Economic Development, State of Hawaii, July 28, 1964.
*Based on 1960 Federal Census.
**From Office of the Lieutenant Governor, State of Hawaii. Instances when apportionment based on registered voters differs from that based on population are indicated by underscoring.

[fol. 25]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

Civil No. 2308

[Title omitted]

SUMMONS—Filed August 13, 1964

To the above named Defendant:

You are hereby summoned and required to serve upon Charles M. Tonaki and Masaji Marumoto, plaintiffs' attorneys, whose addresses are 1201 First National Bank Building, Honolulu, Hawaii, 96813, and 235 Queen Street, Honolulu, Hawaii, 96813, respectively, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Wm. F. Thompson, Jr., Clerk of Court.

E. C. Robinson, Deputy Clerk.

Date: August 13, 1964

[Seal of Court]

(Note: This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.)

[fol. 26]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

Civil No. 2308

[Title omitted]

MOTION FOR PRELIMINARY INJUNCTION—
Filed August 13, 1964

Upon the complaint and the affidavit of Carl J. Guntert annexed hereto, plaintiffs move the Court as follows:

1. To issue a preliminary injunction enjoining the defendant from accepting nomination papers of candidates for State legislative offices, from ordering the printing of ballots for State offices, and from performing any other duties affecting nomination and election for State offices at the 1964 elections.

The grounds of this motion, as more fully set forth in the complaint and the annexed affidavit of Carl J. Guntert, are that:

(a) the existing provisions of the Hawaii State Constitution pertaining to the apportionment of seats in the Senate and the House of Representatives of the Hawaii Legislature are invalid and contrary to the [fol. 27] equal protection clause of the Fourteenth Amendent to the United States Constitution;

(b) defendant Lieutenant Governor is the duly elected, qualified and acting Lieutenant Governor of the State of Hawaii and as such is responsible for the conduct of elections in the State, pursuant to Chapter 11, Revised Laws of Hawaii 1955, as amended;

(c) the State primary election will be held on October 3, 1964, and general election will be held on November 3, 1964. The deadline for filing nomination papers is September 3, 1964;

(d) unless defendant be immediately enjoined, said defendant will cause said elections to be held in accordance with the existing provisions of the State Constitution. Unless said defendant be enjoined pending a final disposition of this action, injury to plaintiffs in the interim will be irreparable even before final judgment for plaintiffs;

(e) no injury will be sustained by the defendant or by the public through issuance of a preliminary injunction.

[fol. 28] 2. To convene for the purpose of hearing and determining this application for a preliminary injunction and for this cause a statutory court of three judges, at least one of whom shall be a circuit judge, in accordance with the provisions of Section 2284, Title 28, United States Code.

Dated: Honolulu, Hawaii, August 12th, 1964.

Charles M. Tonaki, Attorney for Plaintiffs.

[fol. 29]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

Civil No. 2308

[Title omitted]

ATTACHMENT TO MOTION

AFFIDAVIT OF CARL J. GUNTERT—Filed August 13, 1964

State of Hawaii,
City and County of Honolulu, ss.:

Carl J. Guntert, being first duly sworn, on his own behalf and on behalf of the other plaintiffs herein, on oath, deposes and says:

1. That he is one of the plaintiffs in the above entitled action, and has read the complaint herein, and is cognizant of the facts alleged therein, and that to his knowledge, the facts and matters stated and set forth therein are true and correct;

2. That defendant William S. Richardson is the duly elected, qualified and acting Lieutenant Governor of the State of Hawaii and as such is responsible for the conduct of elections in the State, pursuant to Chapter 11, Revised Laws of Hawaii 1955, as amended;

[fol. 30] 3. That said defendant William S. Richardson will accept nomination papers from candidates for State legislative officers, order printing of ballots for State offices, and will perform other duties affecting nomination and election for State offices prior to and for the primary election on October 3 and the general election on November 3, 1964;

4. That the conduct of said primary and general elections will continue the unconstitutional apportionment of seats in the Legislature of the State of Hawaii, which will continue to deprive your affiant of his rights under the equal protection clause of the Fourteenth Amendment to the United States Constitution;

5. That at said elections various candidates for the offices of State senator of the State of Hawaii will be nominated and elected; that said senators will hold office until 1968;

6. That if said elections are permitted to be conducted, the invidious discrimination resulting from the illegal apportionment of seats in the Legislature of the State of Hawaii (as more fully set out in the complaint) will be continued and perpetuated for at least until 1968;

7. That said perpetuation and continuation of the illegally apportioned Legislature of the State of Hawaii denies your affiant and others similarly situated of their rights under the equal protection clause of the Fourteenth Amend-

[fol. 31] ment to the United States Constitution and causes your affiant irreparable injury.

Further affiant sayeth not.

Carl J. Guntert

Subscribed and sworn to before me this 12th day of August, 1964.

(SEAL)

Helen M. Mau, Notary Public, First Circuit, State of Hawaii.

My Commission Expires: 2/15/65.

[fol. 32]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

Civil No. 2308

[Title omitted]

MEMORANDUM OF AUTHORITIES—Filed August 13, 1964

This action is brought under the provisions of the Civil Rights Act, 42 U.S.C. §§ 1983-1988, as well as under 28 U.S.C. § 1343. The authority of this Court to grant an injunction is provided specifically in 28 U.S.C. § 2281 which permits the enjoining of a State officer from the execution of a State statute on the ground of the unconstitutionality of such statute. There is a requirement that the matter be heard and determined by a District Court of three (3) judges, pursuant to 28 U.S.C. § 2284. Specific authority to grant an interlocutory injunction is provided in § 2284.

The fact that plaintiffs request the restraint of a state officer from acting pursuant to a provision of the Constitution of Hawaii does not exclude it from the provisions of

§ 2281, which refers only to a State statute. *Sincock* v. *Duffy,* 215 F. Supp. 169, affirmed in *Roman et al.* v. *Sincock, et al.,* —— U.S. ——, 32 L.W. 4583.

[fol. 33] Enjoining a State election official from conducting an unconstitutional election is a proper subject matter for this Court to entertain, pursuant to §§ 2281 and 2284. The right to enjoin a State election official from conducting elections pursuant to an unconstitutional apportionment scheme was established in *Reynolds, et al.* v. *Sims, et al.,* —— U.S. ——, 32 L.W. 4535.

Section 2284 authorizes this Court to hear, determine and grant interlocutory injunctions as necessary to prevent irreparable injury pending a full determination of the matter. Interlocutory orders were issued in *Mann* v. *Davis,* 213 F. Supp. 577 (1962), affirmed in *Davis* v. *Mann,* —— U.S. ——, 32 L.W. 4579, and by the District Court in *Reynolds* v. *Sims, supra.* In both of these cases, the injunctions were issued prior to a final hearing in order to preserve the rights of the plaintiff pending final determination of the cause. In both cases, the Court issued injunctive orders relating to the conduct of State elections for legislative seats.

Dated at Honolulu, Hawaii, August 12, 1964.

Charles M. Tonaki, Attorney for Plaintiffs.

[fol. 51] [File endorsement omitted]

[fol. 52]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

Civil No. 2308

HENRIETTA DAVIDSON HOLT, JAMES ROBINSON HOLT, CARL J. GUNTERT, ELMER G. LEEHMAN, JOHN J. MEDEIROS and WILLIAM P. LACY, Plaintiffs,

vs.

WILLIAM S. RICHARDSON, Lieutenant Governor of Hawaii, Defendant,

JOHN J. HULTEN and GEORGE M. OKANO, Members of the Legislature of the State of Hawaii, Applicants for Intervention.

ANSWER OF DEFENDANT—Filed August 21, 1964

William S. Richardson, Lieutenant Governor of Hawaii, defendant above named, for answer to the complaint herein, states as follows:

I

Defendant admits the jurisdiction of this Court as stated in paragraph I.

II

Defendant admits that the relief sought by the complaint requires the convening of a three judge District Court as provided under 28 U.S.C. § 2281 et seq., as requested by paragraph II.

III

Defendant admits the allegations of paragraph III.

[fol. 53] IV

Defendant admits the allegations of paragraph IV.

V

Defendant denies that the sections of the Constitution of the State of Hawaii which apportion the members of the house of representatives of the legislature of the State of Hawaii are invalid, as alleged in paragraph V, but admits that, under recent decisions of the Supreme Court of the United States, the sections of the Constitution of the State of Hawaii which apportion the members of the senate of the legislature of the State of Hawaii may be invalid and leaves plaintiffs to their proof thereof.

Defendant admits that he and his predecessors in office have complied with provisions of the Constitution of the State of Hawaii, alleged in paragraph V to be invalid.

VI

Defendant admits the allegations of paragraph VI.

VII

Defendant admits the allegations of paragraph VII.

VIII

Defendant admits the allegations of paragraph VIII.

Defendant further states that the number of representatives from each representative district, as set forth in Ex-
[fol. 54] hibit B was as a result of an apportionment based upon the number of registered voters in each of such districts in the general election in Hawaii in 1948.

Defendant further states that the number of representatives from each representative district, as set forth in the table in paragraph XI of the complaint, was as a result of an apportionment based upon the number of registered voters in each of such districts in the general election in Hawaii in 1958.

IX

Defendant admits that the apportionment plan covering both the senate and the house of representatives is an integrated apportionment scheme for over-all legislative representation, but alleges that the portion of the plan covering the house of representatives is severable from that portion of the plan covering the senate and denies that any invalidity of the apportionment of the senate invalidates the apportionment of the house of representatives, as alleged in paragraph IX.

X

Defendant admits the allegations contained in paragraph X, but denies that an apportionment of the members of the senate is required by law to be based upon total population.

XI

Defendant admits the allegations contained in paragraph XI, but denies that an apportionment of the members of the house of representatives is required by any law to be based upon total population.

[fol. 55] Defendant further states that comparisons made in said paragraph XI to the number of registered voters per representative, based upon 1962 registered voters, is misleading for the reason that the current apportionment of the house of representatives is based upon the number of voters registered for the general election in 1958, and is not required by any law to be revised earlier than in the

year 1969, based upon the number of voters registered for the generai election in 1968.

Defendant further states that there was a total of 175,317 voters registered in all representative districts for the general election in 1958. With a house of 51 members, the theoretical number of voters that each member should represent was 3,437 (175,317 ÷ 51). This fact would indicate a range of from 1719 voters to 5155 voters for each representative district because a district having one more than half of the theoretical number of registered voters would be entitled to one representative and a district would not be entitled to a second representative until the registered voter population of the district exceeded the theoretical number by one more than the theoretical number plus one half of such number.

Defendant alleges that each one of the eighteen representative districts falls well within that range.

The representative elected from the first representative district, the district having the least registered voters in 1958, represented 2,209 registered voters, 490 more than the minimum theoretically required for one representative.

[fol. 56] The six representatives elected from the fifteenth representative district, the district having the most registered voters in 1958, (21,063) each represented 3,510 registered voters, 73 more than the theoretical number each representative should represent.

The three representatives elected from the second representative district, the district having the highest ratio of registered voters to representatives, each represented 4,609 registered voters, 546 less than the maximum theoretically required for one representative.

All other representative similarly represent a number of registered voters within the permissible extremes, as shown by the following table:

Representative District	1958 Registered Voters	No. of House Members	Ratio of Members to Voters
1	2,209	1	1-2,209
2	13,836	3	1-4,609
3	2,986	1	1-2,986
4	3,862	1	1-3,862
5	2,641	1	1-2,641
6	2,560	1	1-2,560
7	14,195	4	1-3,548
8	13,876	4	1-3,469
9	5,929	2	1-2,964
10	12,926	4	1-3,231
11	10,525	3	1-3,508
12	8,372	3	1-2,791
13	7,621	2	1-3,810
14	14,134	4	1-3,533
15	21,063	6	1-3,510
16	13,746	4	1-3,436
17	13,455	4	1-3,364
18	11,381	3	1-3,797

XII

Defendant denies that the provisions of Article III, Sections 2, 3 and 4 and Article XVI Section 1 of the Constitution of the State of Hawaii violate the Fourteenth Amend-
[fol. 57] ment, but leaves plaintiffs to their proof thereof.

Defendant further states that no law requires the apportionment of either house of the legislature to be based on total population.

XIII

Defendant denies the allegations of paragraph XIII.

XIV

Defendant denies the allegations of paragraph XIV.

Defendant denies the allegations of paragraph XV.

XVI

Defendant admits that he must perform his statutory duties with respect to the constitutional provisions challenged by the complaint, but denies that plaintiffs require the protection of this court by the entry of a decree declaring Article III Sections 2, 3 and 4, Article XVI Section 1, and the proviso at the end of the sixth paragraph of Section 2 of Article XV of the said State Constitution to be unconstitutional and denies that under equitable principles he should be enjoined from performing such statutory duties.

Defendant further states that the election process as prescribed by law for the 1964 elections of senators and representatives is now in progress and that to attempt to change such process at this time by judicial decree would be contrary to the best interests of the public and under just and equitable considerations should not be interferred with at this time.

[fol. 58] XVII

Defendant admits the allegations of the first paragraph of paragraph XVII.

Defendant admits that the process for amending the Constitution of the State takes time as alleged in paragraph XVII but denies that the amount of time is inordinate under equitable principles.

Defendant denies that the restriction in Article XV, Section 2 of the State Constitution on amending the apportionment of the senate forecloses relief by constitutional amendment, as alleged in paragraph XVII, for the reason that said restriction can itself be amended.

Defendant admits the allegations contained in the third paragraph of paragraph XVII and denies the allegations contained in the fourth paragraph of paragraph XVII.

XVIII

For further answer to the complaint, defendant denies that this Court has power to determine that the state legislature, pending the adoption of appropriate constitutional amendments, may provide for apportionment of either house of the legislature by statute (as prayed for), all matters involving the apportionment of either house having been expressly reserved to the people by the State Constitution.

XIX

For further answer to the complaint, defendant alleges that should this Court interfere with the impending 1964 elections of senators and representatives by directing all such elections to be on an at-large basis, the result would deprive virtually all of the voters in areas other than the Island of Oahu of representation in the legislature and [fol. 59] would in fact be more inequitable and violative of the Fourteenth Amendment of the Constitution of the United States than may now result from the present apportionment of the legislature.

Wherefore defendant prays that:

1. This Court determine the validity of Article III, Sections 2, 3 and 4, Article XVI, Section 1, and the proviso at the end of the sixth paragraph of Section 2 of Article XV of the Constitution of the State of Hawaii.

2. This Court refuse to enjoin the defendant from performing his statutory duties with respect to the 1964 elections of senators and representatives of the legislature of the State of Hawaii.

3. This Court refuse to interfere with the conduct of said elections, by requiring such elections to be conducted on an at-large basis or by interfering therewith in any other way.

4. This Court, in the event the aforesaid provisions of the Constitution of the State of Hawaii, or any of them,

are determined to be invalid, abstain from directing any change in said provisions, or in the present apportionment of the legislature of the State of Hawaii, until the people of Hawaii have had a reasonable opportunity to amend the provisions determined to be invalid in the manner established by said Constitution.

5. This Court grant such other and further relief as it may deem meet and proper.

Dated: Honolulu, Hawaii, this 21st day of August, 1964.

R. G. Dodge, 602 Trustee Building, Honolulu, Hawaii, Attorney for Defendant.

[fol. 60] [File endorsement omitted]

[fol. 64]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

Civil No. 2308

HENRIETTA DAVIDSON HOLT, JAMES ROBINSON HOLT, CARL J. GUNTERT, ELMER G. LEEHMAN, JOHN J. MEDEIROS and WILLIAM P. LACY, Plaintiffs,

vs.

WILLIAM S. RICHARDSON, Lieutenant Governor of Hawaii, Defendant,

JOHN A. BURNS, Governor of Hawaii, Applicant for Intervention.

COMPLAINT IN INTERVENTION OF JOHN A. BURNS—Filed August 24, 1964

John A. Burns, intervenor, hereby files his complaint and alleges that:

I

The jurisdiction of this Court is based on the Civil Rights Act, 42 USC §§ 1983, 1988. This Court has additional jurisdiction under 28 USC § 1343. Relief hereunder is further sought pursuant to the Federal Declaratory Judgment Act, 28 USC §§ 2201, 2202.

II

Intervenor is a citizen, taxpayer and elector of the United States and of the State of Hawaii, a qualified voter in the 5th senatorial district and the 8th representative dis- [fol. 65] trict of the State of Hawaii, and is the duly elected, qualified and acting Governor of the State of Hawaii.

III

Intervenor makes the same allegations as plaintiffs with respect to the unconstitutionality of the provisions of the Hawaii Constitution governing composition and apportionment of the Hawaii Legislature, and the resultant dilution and debasement of his vote and denial of his right to equal protection under the 14th Amendment to the Constitution of the United States. Accordingly, he adopts paragraph II and paragraphs IV through XVII of plaintiffs' complaint, and incorporates the same herein by reference.

IV

The issue of unconstitutional apportionment of the State Legislature involves a matter *publici juris*. Intervenor, as governor, is the chief executive officer of the State, and as such is representative of all of the people of the State of Hawaii, and their rights and interests, including their right to have their State apportioned in accordance with the provisions of the Constitution of the United States and to be governed by a legislature which fairly represents the whole body of the electorate, in accordance with the

Constitution of the United States. By his oath of office, prescribed in Article XIV, Section 4 of the Hawaii Constitution, he is sworn to support and defend the Constitution of the United States. Accordingly he claims a right to, [fol. 66] and seeks (a) an apportionment of the State Legislature that is in conformity with the provisions of the Constitution of the United States, and (b) a declaration with respect to the validity of the provisions of the Constitution of the State of Hawaii affecting the composition and apportionment of the State Legislature.

As governor he is responsible, among other things, for the calling of special sessions of the State Legislature (Hawaii Constitution, Article III, Sec. 11), for extension of any session of the Legislature (*Ibid.*), for reapportionment of the State House of Representatives (*Id.*, Article III, Sec. 4), for approval or veto of legislation (*Id.*, Article III, Sec. 17) and for proclamation of general elections at least 40 days before such election (Section 11-1, Revised Laws of Hawaii 1955, as amended). With relation to the proper performance of such duties, he will be directly affected by and thus has a direct interest in the judgment in this action.

Wherefore, the intervenor respectfully prays that:

1. This Court take jurisdiction of this matter; that a special three judge court be called to hear and determine this cause as provided by law in 28 USC § 2281 et seq., and declare the rights of intervenor pursuant to 28 USC § 2201 in the premises, to-wit:

(a) That Article III, Sections 2, 3 and 4, Article XVI, Section 1, and the proviso at the end of the sixth paragraph in Section 2 of Article XV, of the Constitution of the State of Hawaii have deprived and continue to deprive [fol. 67] the intervenor of equal protection of the laws in violation of the 14th Amendment of the Constitution of the United States, and are invalid; and

(b) That the State Legislature, pending the adoption of an appropriate constitutional amendment, may provide

for apportionment by statute, and that any apportionment law must provide for apportionment of both the senate and house of representatives of the State Legislature on the basis of population.

2. Intervenor further prays that after hearing this action the Court grant further relief in accordance with 28 USC § 2202 as follows:

(a) If the State Legislature now in special session does not enact a valid reapportionment plan that is applicable to the 1964 elections and/or if another special session is called prior to the 1964 elections and no such reapportionment plan is then enacted:

(1) To enjoin the defendant from accepting nomination papers of candidates for State legislative offices, from ordering printing of ballots for State offices and from performing any other duties relating to or affecting nomination and election for State offices in accordance with those provisions of the State Constitution affecting composition and apportionment of the Legislature, and

a. To require that the defendant conduct the election of 25 senators and 51 representatives for the primary and general elections scheduled for 1964 on [fol. 68] an at-large basis, state-wide, without regard to the existing apportionment scheme; or

b. To provide for conduct of the 1964 elections in accordance with an apportionment plan prepared by the Court in conformity with the decisions of the Supreme Court of the United States;

Provided that, if the Court determines that the 1964 elections are so imminent that effectuation of any reapportionment plan therefor would entail substantial and unreasonable difficulties, the Court may permit the 1964 elections to be held in accordance

with existing constitutional provisions, notwithstanding any declaration of invalidity thereof.

(b) In any event, to retain jurisdiction of the cause to review whatever new apportionment system has been enacted or adopted to meet the requirements of the 14th Amendment to the Constitution of the United States, and for further hearings herein as to determination of the validity of any such new apportionment system, and in that connection, to permit the intervenor to amend his complaint and to pray for appropriate relief.

(c) Upon failure of enactment of a valid apportionment statute or adoption of a valid amendment of the State Constitution so that the 1966 elections may be conducted in accordance with an apportionment plan that meets the requirements of the 14th Amendment to the Constitution of the United States, to order that the 1966 elections be [fol. 69] conducted in accordance with an apportionment plan prepared by the Court.

(d) To provide for such other relief as may be just, equitable and proper.

Dated: Honolulu, Hawaii, this 22nd day of August, 1964.

Bert T. Kobayashi, Attorney General, State of Hawaii, Bertram T. Kanbara, Nobuki Kamida, Peter A. Donahoe, Deputy Attorneys General, By Bertram T. Kanbara, Counsel for Applicant for Intervention.

[fol. 75] [File endorsement omitted]

[fol. 76]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

Civil No. 2308

HENRIETTA DAVIDSON HOLT, JAMES ROBINSON HOLT, CARL J. GUNTERT, ELMER G. LEEHMAN, JOHN J. MEDEIROS and WILLIAM P. LACY, Plaintiffs,

vs.

WILLIAM S. RICHARDSON, Lieutenant Governor of Hawaii, Defendant,

JOHN J. HULTEN and GEORGE M. OKANO, Members of the Legislature of the State of Hawaii, Applicants for Intervention as Plaintiffs,

NELSON K. DOI, KAZUHISA ABE, TOSHI ANSAI, FRANCIS M. F. CHING, WILLIAM H. HILL, BERNARD G. KINNEY, BENJAMIN MENOR, NOBORU MIYAKE, THOMAS S. OGATA, CLINTON I. SHIRAISHI, DAVID K. TRASK, JR., JOHN T. USHIJIMA, JULIAN R. YATES, SR., Applicants for Intervention as Defendants.

APPLICATION TO FIX TIME FOR HEARING AND ORDER THEREON —Filed August 24, 1964

The above applicants to intervene as defendants request the Court fix 2:00 p.m., Monday, August 24, 1964, as the time for hearing their application upon the ground that another such application is to be then heard and that if their application is granted, their interests require their repre-

[fol. 77] sentation at the hearing on the preliminary injunction.

Dated: Honolulu, Hawaii, August 21, 1964.

Frank D. Padgett, 312 Castle & Cooke Building, Honolulu, Hawaii, Attorney for said Applicants.

Robertson, Castle & Anthony, Of Counsel.

It Is So Ordered:

Martin Pence, District Judge.

[fol. 78]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

[Title omitted]

MOTION OF NELSON K. DOI, ET AL. TO INTERVENE AS DEFENDANTS—Filed August 24, 1964

The above-named applicants for intervention as defendants move, pursuant to Rule 24(a) of the Federal Rules of Civil Procedure, for leave to intervene as defendants in this action in order to answer the complaint, a copy of [fol. 79] which answer is attached, on the ground that the representation of the defendant, the Lieutenant Governor of Hawaii, is or may not be adequate and that the applicants are or may be bound by the judgment in this action.

Dated: Honolulu, Hawaii, August 21, 1964.

Frank D. Padgett, 312 Castle & Cooke Building, Honolulu, Hawaii, Attorney for said Applicants.

Robertson, Castle & Anthony, Of Counsel.

[fol. 80]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

Civil No. 2308

NOTICE OF MOTION TO INTERVENE—Filed August 24, 1964

To:

Charles M. Tonaki, Esq., Barry J. Rubin, Esq., 1201 First National Bank Building, Honolulu, Hawaii, Counsel for Plaintiffs.

Masaji Marumoto, Esq., 235 Queen Street, Honolulu, Hawaii, Associate Counsel for Plaintiffs.

William S. Richardson, Lieutenant Governor, State of Hawaii, Iolani Palace, Honolulu, Hawaii, Defendant.

Bert T. Kobayashi, Attorney General, State of Hawaii.

Please Take Notice that the undersigned will bring the foregoing motion to intervene on for hearing before the presiding judge of this Court, the Honorable Martin Pence, on the 24th day of August, 1964, at 2:00 p.m., or as soon thereafter as counsel can be heard.

Dated: Honolulu, Hawaii, August 21, 1964.

Frank D. Padgett, Attorney for said Applicants.

[fol. 81] [File endorsement omitted]

[fol. 82]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

Civil No. 2308

HENRIETTA DAVIDSON HOLT, JAMES ROBINSON HOLT, CARL J. GUNTERT, ELMER G. LEEHMAN, JOHN J. MEDEIROS and WILLIAM P. LACY, Plaintiffs,

vs.

WILLIAM S. RICHARDSON, Lieutenant Governor of Hawaii, Defendant,

JOHN J. HULTEN and GEORGE M. OKANO, Members of the Legislature of the State of Hawaii, Intervenors Plaintiffs,

NELSON K. DOI, KAZUHISA ABE, TOSHI ANSAI, FRANCIS M. F. CHING, WILLIAM H. HILL, BERNARD G. KINNEY, BENJAMIN MENOR, NOBORU MIYAKE, THOMAS S. OGATA, CLINTON I. SHIRAISHI, DAVID K. TRASK, JR., JOHN T. USHIJIMA, JULIAN R. YATES, SR., Intervenors Defendants.

ANSWER AND CROSS-CLAIM OF NELSON K. DOI, ET AL.
—Filed August 24, 1964

Come now the above-named intervenors defendants and allege that they are taxpayers and registered voters of the State of Hawaii and duly elected members of the Senate of the State of Hawaii and that their names and the Senate and Representative Districts where they reside are as follows:

[fol. 83]

Senator	*Senate District*	*Representative District*
Nelson K. Doi	1	2
Kazuhisa Abe	1	2
Toshi Ansai	3	7
Francis M. F. Ching	6	18
William H. Hill	1	2
Bernard G. Kinney	2	5
Benjamin Menor	1	2
Noboru Miyake	6	18
Thomas S. Ogata	3	7
Clinton I. Shiraishi	6	18
David K. Trask, Jr.	3	7
John T. Ushijima	1	2
Julian R. Yates, Sr.	2	4

[fol. 84] ANSWER

1. They admit that plaintiffs claim to base their action upon the statutory Section cited in paragraph I of the complaint. They deny that there is any real case or controversy between plaintiffs and defendant.

2. They admit the allegations of paragraph II.

3. They lack sufficient information to admit the allegations of paragraph III, and they, therefore, deny them.

4. They admit the allegations of paragraph IV.

5. They deny the allegations of paragraph V.

6. They admit the allegations of paragraphs VI, VII and VIII.

7. They deny the allegations of paragraph IX.

8. They admit the allegations of the first sentence of paragraph X, and for lack of sufficient information, deny the remainder.

9. They admit the allegations of the first sentence of paragraph XI, and for lack of sufficient information, deny the remaining allegations of said paragraph.

10. They deny the allegations of paragraphs XII, XIII, XIV, XV, XVI and XVII, save and except the allegations of the second paragraph thereof on page 12, which same are admitted.

[fol. 85] 11. The Senate of the State of Hawaii by the passage of numerous legislative measures has evidenced good faith in attempting to achieve a legislative apportionment beyond constitutional criticism and will continue to do so, and there is neither need nor occasion for judicial interference with the legislative and constitutional processes of the State of Hawaii.

12. That there has not been an adequate opportunity for the legislature and the people of Hawaii to consider the problems of reapportionment and to act thereon, and that should the present legislative session adjourn without agreement thereon, the new legislature would be elected in 1964 should be given an opportunity to take appropriate action.

Wherefore, said intervenors pray that the complaint herein be dismissed.

Cross-Claim

As an alternative to the dismissal of this action as above prayed, the intervenors allege that should the provisions of Hawaiian constitutional and statutory laws be held invalid by this Court, that:

1. There is no reason to believe that the legislature to be elected in 1964 will not with reasonable dispatch take the necessary action to provide valid apportionment consti-
[fol. 86] tutional and statutory provisions.

2. If such action is not taken, then in granting relief, this Court should decree the calling of a Constitutional

Convention in the manner provided in the Constitution of the State of Hawaii and in legislation already passed by the Senate of Hawaii.

3. Should this Court decree a judicial reapportionment, it should not reapportion the House of Representatives of the State of Hawaii, and any reapportionment of the Senate of the State of Hawaii should be on the basis set forth in House Bill 3, Senate Draft 1, that is, on the basis of one senator allocated to each county and the remaining senators allocated on the basis of the number of registered voters.

Wherefore, intervenors alternatively pray for action in the manner set forth in this cross-claim.

Dated: Honolulu, Hawaii, August 21, 1964.

Frank D. Padgett, 312 Castle & Cooke Building, Honolulu, Hawaii, Attorney for Intervenors, Defendants.

Robertson, Castle & Anthony, Of Counsel.

[fol. 87] [File endorsement omitted]

[fol. 92]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

Civil No. 2308

HENRIETTA DAVIDSON HOLT, JAMES ROBINSON HOLT, CARL J. GUNTERT, ELMER G. LEEHMAN, JOHN J. MEDEIROS and WILLIAM P. LACY, Plaintiffs,

vs.

WILLIAM S. RICHARDSON, Lieutenant Governor of Hawaii, Defendant,

ELMER F. CRAVALHO, WILLIAM M. FURTADO, and HOWARD Y. MIYAKE for themselves and all other members of the House of Representatives, Second Legislature, State of Hawaii, Intervenors.

ANSWER OF ELMER F. CRAVALHO, ET AL.—
Filed August 24, 1964

Elmer F. Cravalho, William M. Furtado, and Howard Y. Miyake for themselves and all other members of the House of Representatives, Second Legislature, State of Hawaii, hereinafter referred to as intervenors, answering plaintiffs' complaint, state as follows:

I

They admit the allegations of paragraph I.

II

They admit that plaintiffs' request for a three Judge District Court pursuant to 28 U.S.C., Secs. 2281 et seq. is appropriate. They deny the remaining allegations of paragraph II.

III

They are without knowledge or information sufficient to form a belief as to the truths of the averments of paragraph III.

[fol. 93]

IV

They admit the allegations of paragraph IV.

V

They deny that the sections of the constitution of the State of Hawaii which apportion members of the House of Representatives are invalid. They are without knowledge or information sufficient to form a belief as to the truth of the other averments of paragraph V.

VI

They admit the allegations of paragraph VI.

VII

They admit the allegations of paragraph VII.

VIII

They admit the allegations of paragraph VIII.

IX

They admit that the apportionment plan covering the Senate and House of Representatives is an integrated apportionment scheme for over-all legislative representation but deny that any invalidity of the apportionment of the Senate invalidates the apportionment of the House of Representatives, as alleged in paragraph IX.

X

They are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph X.

XI

They admit that the House of Representatives was reapportioned in 1959 on the basis of reigstered voters in the 1958 general election. They deny that such reapportionment was or is now invalid. They admit that 1960 population figures stated are from the Federal Census but deny [fol. 94] that they may be used to show invalidity of the reapportionment of the House of Representatives. They deny the remaining allegations of paragraph XI.

XII

As for paragraph XII they deny that Article III, Sections 3 and 4 and Article XVI, Section 1 violate the Fourteenth Amendment of the Constitution of the United States, are without knowledge or information sufficient to form a belief as to the truth of the matters as to population and apportionment set forth in Exhibit "C" of the Complaint and deny that such Exhibit "C" shows or tends to show that said Article III, Sections 3 and 4 and Article XVI, Section 1 are invalid.

XIII

They deny the averments of paragraph XIII alleging debasement of plaintiffs' votes as resulting from unconstitutional apportionment of the House of Representatives and deny that such apportionment denied plaintiffs due process or equal protection of the laws.

XIV

They neither admit nor deny the truth of the averments of paragraph XIV.

XV

They deny the allegations of paragraph XV.

XVI

They deny that plaintiffs' interests can only be protected by a decree declaring Article III, Sections 2, 3, and 4 and

Article XVI, Section 1, and the proviso at the end of the sixth paragraph in Section 2 of Article XV of the state constitution to be unconstitutional or by enjoining defendant from performing acts and duties under said provisions as alleged in paragraph XVI.

[fol. 95]

XVII

They deny the allegations of paragraph XVII.

XVIII

For further answer, they state that this Court should not enjoin the 1964 election of members of the Senate and House of Representatives as said election is so imminent as to preclude any reasonable alternative apportionment plans.

Wherefore intervenors pray that:

1. This Court determine that Article III, Sections 3 and 4 and Article XVI, Section 1 of the constitution of the State of Hawaii are valid and constitutional.

2. This Court refuse to enjoin the defendant from performing his statutory duties with respect to the 1964 elections of senators and representatives of the legislature of the State of Hawaii.

3. This Court refuse to interfere with the conduct of said elections, by requiring such elections to be conducted on an at-large basis or by interfering therewith in any other way.

4. This Court, in the event the aforesaid provisions of the constitution of the State of Hawaii, or any of them, are determined to be invalid, abstain from directing any change in said provisions, or in the present apportionment of the legislature of the State of Hawaii, until the people of Hawaii have had a reasonable opportunity to amend the provisions determined to be invalid in the manner established by said Constitution.

5. This Court grant such other and further relief as it may deem meet and proper.

[fol. 96] Dated: Honolulu, Hawaii, this 24th day of August, 1964.

James T. Funaki, Attorney, House of Representatives, State of Hawaii, Iolani Palace, Honolulu, Hawaii, Counsel for Applicants for Intervention.

[fol. 330]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

Civil No. 2308

HENRIETTA DAVIDSON HOLT, et al., Plaintiffs,

vs.

WILLIAM S. RICHARDSON, Lieutenant Governor of Hawaii, Defendant.

PRE-TRIAL ORDER—Filed January 11, 1965

[fol. 331] I.

Jurisdiction

Jurisdiction is vested in this Court, by virtue of the allegations in the Complaint of the plaintiffs that the state legislature is arbitrarily and capriciously apportioned and the plaintiffs and all others similarly situated, have had their votes debased and are therefore deprived of equal protection under the law, as guaranteed by the 14th Amendment to the United States Constitution; jurisdiction is fur-

ther vested in this Court by the Civil Rights Act, 42 U.S.C. §§ 1983, 1988 and under 28 U.S.C. §§ 2201 and 2281 et seq.

II.

Admitted Facts

The following facts are admitted by the parties:

1. That each of the plaintiffs is a citizen, resident and qualified voter in the respective senatorial and representative districts as alleged in paragraph III of the Complaint.

2. That defendant Richardson is the duly elected, qualified and acting Lieutenant Governor of the State of Hawaii and as such is responsible for the supervision of elections, [fol. 332] pursuant to Section 14-8 and Chapter 11, Revised Laws of Hawaii 1955, as amended, and such other statutory duties related thereto, as alleged in paragraph IV of the Complaint.

3. That the House of Representatives was reapportioned by the Governor in 1959 on the basis of 1958 registered voters, pursuant to Article III, Section 4 of the Constitution of the State of Hawaii.

4. That the Second Legislature of the State of Hawaii was convened in a special session on July 28, 1964, and adjourned on August 26, 1964, without enacting any statute initiating any procedure for reapportioning the legislature.

5. That according to the 1960 federal census, the total population of the State of Hawaii was 632,772; there were 175,317 registered voters in 1958, 202,059 in 1960, 221,650 in 1962, and 239,285 in 1964.

6. That a tabulation of the 1960 population, the registered voters for the years 1958, 1960, 1962 and 1964 in each of the senatorial and representative districts and the number of legislators representing each of said districts shows the following:

The Senate	1960 Population	1958 Reg. Voters	1960 Reg. Voters	1962 Reg. Voters	1964 Reg. Voters	Legislators
First—Hawaii	44,297	19,031	19,266	20,053	20,739	5
Second—Hawaii	17,035	6,503	6,793	7,141	7,359	2
Third—Maui	42,855	16,755	17,539	18,325	18,752	5
Fourth—Oahu	182,307	62,398	73,981	80,490	87,209	5
Fifth—Oahu	318,102	59,249	73,142	83,834	92,960	5
Sixth—Kauai	28,176	11,381	11,338	11,807	12,266	3

[fol. 333]

The House	1960 Population	1958 Reg. Voters	1960 Reg. Voters	1962 Reg. Voters	1964 Reg. Voters	Legislators
First—Hawaii	5,030	2,209	2,257	2,319	2,399	1
Second—Hawaii	31,553	13,836	14,036	14,706	15,274	3
Third—Hawaii	7,714	2,986	2,973	3,028	3,066	1
Fourth—Hawaii	11,369	3,862	4,073	4,239	4,329	1
Fifth—Hawaii	5,666	2,641	2,720	2,902	3,030	1
Sixth—Maui	7,138	2,560	2,574	2,739	2,897	1
Seventh—Maui	35,717	14,195	14,965	15,586	15,855	4
Eighth—Oahu	68,281	13,876	18,369	22,450	27,073	4
Ninth—Oahu	42,816	5,929	7,410	7,973	8,934	2
Tenth—Oahu	95,118	12,926	17,003	20,861	23,859	4
Eleventh—Oahu	57,743	10,525	12,553	14,401	15,148	3
Twelfth—Oahu	25,552	8,372	10,000	10,889	11,500	3
Thirteenth—Oahu	28,592	7,621	7,807	7,260	6,446	2
Fourteenth—Oahu	42,476	14,134	16,056	17,305	18,571	4
Fifteenth—Oahu	60,125	21,063	25,869	28,685	31,302	6
Sixteenth—Oahu	42,750	13,746	16,176	17,072	18,201	4
Seventeenth—Oahu	36,956	13,455	15,880	17,428	19,135	4
Eighteenth—Kauai	28,176	11,381	11,338	11,807	12,266	3

The first, second, third and sixth senatorial districts contain 21% of the 1960 population of the State. They elect 15 of the 25 senators (60%). The fourth and fifth senatorial districts contain 79% of the 1960 population of the State. They elect 10 of the 25 senators (40%).

7. That if each of the 25 senators represented exactly the same number of persons or registered voters, then each senator would represent 25,311 persons according to the 1960 federal census, or 7,012 registered voters according to 1958 voter registration, or 8,082 registered voters in 1960, or 8,866 registered voters in 1962, or 9,571 registered voters in 1964. Deviations from these averages (lowest and

highest) in terms of per capita representation may be illustrated as follows:

[fol. 334] Each Senator Represents

	1960 Population	1958 Reg. Voters	1960 Reg. Voters	1962 Reg. Voters	1964 Reg. Voters
Average (25 Senators)	25,311	7,012	8,082	8,866	9,571
2nd—Hawaii (2 Senators)	8,518 (lowest)	3,251 (lowest)	3,396 (lowest)	3,571 (lowest)	3,678 (lowest)
4th—Oahu (5 Senators)	36,461	12,479 (highest)	14,796 (highest)	16,098	17,442
5th—Oahu (5 Senators)	62,620 (highest)	11,850	14,628	16,767 (highest)	18,592 (highest)

8. That if each of the 51 representatives represented exactly the same number of persons or registered voters, then each representative would represent 12,407 persons according to the 1960 federal census, or 3,437 registered voters according to 1958 voter registration, or 3,962 registered voters in 1960, or 4,346 registered voters in 1962, or 4,691 registered voters in 1964. Deviations from these averages (lowest and highest) in terms of per capita representation may be illustrated as follows:

Each Representative Represents

	1960 Population	1958 Reg. Voters	1960 Reg. Voters	1962 Reg. Voters	1964 Reg. Voters
Average (51 Representatives)	12,407	3,437	3,962	4,346	4,691
1st—Hawaii (1 Representative)	5,030 (lowest)	2,209 (lowest)	2,257 (lowest)	2,319 (lowest)	2,399 (lowest)
8th—Oahu (4 Representatives)	17,070	3,469 (highest)	4,592 (highest)	5,610 (highest)	6,768 (highest)
10th—Oahu (4 Representatives)	23,779 (highest)	3,231	4,251	5,215	5,965

[fol. 335] 9. The State of Hawaii has but four political subdivisions, each one a county. Each county is physically separated from every other county.

III.

Witnesses and Exhibits

Each party reserves the right to introduce further evidence by additional witnesses or exhibits.

IV.

Issues of Fact

1. The distribution of the population throughout the State of Hawaii in terms of eligible voters.

2. The historical development of the senatorial and representative districts.

3. The policy of the State of Hawaii regarding voter eligibility.

V.

Issues of Law

The following are the issues to be determined by the Court:

1. Is the existing apportionment of the legislature of the State of Hawaii unconstitutional, in whole or in part?

2. May the State of Hawaii choose either (a) gross population, (b) eligible voters, or (c) registered voters as a basis for apportionment of its legislature?

3. Does the invalidity of the apportionment in the Senate of the Hawaii legislature necessarily invalidate the apportionment of the House of Representatives?

[fol. 336] 4. Is the proviso in the sixth paragraph of Section 2 in Article XV of the Hawaii Constitution relating to constitutional amendments valid?

5. Are the provisions in Article III, Sections 2 and 3 of the Hawaii Constitution which determine the number of senators and representatives respectively, severable from the remainder of the provisions of the Constitution relating to apportionment of the Senate and the House of Representatives, assuming the latter are valid?

6. Does the legislature have the power to reapportion by statute, at least pending adoption of a valid constitutional amendment?

7. May a reapportionment plan cut off the term of a hold-over senator when the same is necessary to effectuate such plan?

8. Is an apportionment scheme which provides for a mixture of single-member and multi-member districts or multi-member districts with varying numbers of legislators from each in one house valid?

9. Is a plan which apportions one senator to each county regardless of population, then apportions the remaining senators among the senatorial districts on the basis of population or registered voters valid?

10. What relief may be properly granted in this case?

VI.

Action by the Court

1. A three-Judge District Court was convened on August 25, 1964, to hear plaintiffs' motion for a preliminary injunction, in accordance with the provisions of 28 U.S.C. 2281 and 2284.

2. In the hearing before the three-Judge Court on August 25, 26 and 27, 1964, the Court granted the several Motions to Intervene by the following parties:

[fol. 337] (a) As Intervenors-Plaintiff: John A. Burns, Governor, State of Hawaii, John J. Hulten, George M. Okano, George R. Ariyoshi, O. Vincent Esposito,

Mitsuyuki Kido, Patsy T. Mink, Sakae Takahashi, and Vincent H. Yano, members of the Legislature of the State of Hawaii.

(b) As Intervenors-Defendant: Nelson K. Doi, Kazuhisa Abe, Toshi Ansai, Francis M. F. Ching, William H. Hill, Bernard C. Kinney, Benjamin Menor, Noboru Miyake, Thomas S. Ogata, Clinton I. Shiraishi, David K. Trask, Jr., John T. Ushijima, and Julian R. Yates, Sr.

(c) As Intervenors-Defendant: Elmer F. Cravalho, William M. Furtado and Howard Y. Miyake, for themselves and other members of the House of Representatives, Second Legislature, State of Hawaii.

3. The Court allowed the following exhibits into evidence:

(a) By the Plaintiffs:

1—Tabulation of Population and Registered Voters

2—House Conferees' Report No. 1 Re: H.B. 3, H.D. 1, S.D. 1

2A—H.B. 3, H.D. 1

3—Letter to Lieutenant Governor dated July 10, 1964

4—Reply from Lieutenant Governor dated July 13, 1964

5—Map—City of Honolulu (Enumeration Districts and Census Tracts)

6—Map—County of Maui

6A—Map—Island of Maui

6B—Map—Wailuku and Kahului Complex

6C—Map—Islands of Molokai and Lanai

[fol. 338] 7—Map—Island of Hawaii (Proposed Districts)

8—Map—Island of Oahu, Single Member Districts (51 House—25 Senate)

9—Map—Island of Kauai (Proposed Districts)

10—Explanation of Method Equal Proportions, Constitutional Convention Proceedings Volume 2, Page 115

11—Standing Committee Report No. 92, Constitutional Convention 1950

(b) By the Intervenors-Plaintiff:

1—Tabulation of Population and Averages on Representation

2—Statement of Wirtz on Apportionment, Constitutional Convention

(c) By the Defendant:

A—Testimony of Robert Schmitt to Senate dated July 24, 1964 and Tables

(d) By the Intervenors-Defendant (Neighbor Island Senators):

S1—Committee of the Whole Report No. 1 Re: S.B. 3

S2—Committee of the Whole Report No. 2 Re: S.B. 12, S.D. 1

S3—Committee of the Whole Report No. 3 (with Appendix A and B) Re: H.B. 3, H.D. 1, S.D. 1

S4—Committee of the Whole Report No. 4 Re: S.B. 10 10

All House Bills (H.B.), Senate Bills (S.B.) and Committee Reports mentioned in the above list of exhibits in evidence refer to those measures which were before the Second Legislature of the State of Hawaii in its 1964 Special Session.

[fol. 339] It is therefore agreed by the parties in the above styled cause that the above shall be binding upon all parties unless hereafter modified by order of the Court.

Dated: Honolulu, Hawaii, this 10th day of December, 1964.

Charles M. Tonaki, attorney for Henrietta Davidson Holt et al., Plaintiffs.

Robert G. Dodge, attorney for William S. Richardson, Defendant.

Bert T. Kobayashi, Attorney General, for John J. Hulten et al., Intervenors-Plaintiffs.

Frank D. Padgett, attorney for Nelson K. Doi, et al., Intervenors-Defendants.

James T. Funaki, attorney for Elmer F. Cravalho, et al., Intervenors-Defendants.

It Is So Ordered:

Martin Pence, Judge of the above-entitled Court.

[File endorsement omitted]

[fol. 370]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

Civil No. 2308

HENRIETTA DAVIDSON HOLT, et al., Plaintiffs,

vs.

WILLIAM S. RICHARDSON, Lieutenant Governor of Hawaii, Defendant,

JOHN J. HULTEN, et al., Members of the Legislature of the State of Hawaii, and JOHN A. BURNS, Governor of Hawaii, Intervenors-Plaintiffs,

NELSON K. DOI, et al., Members of the Senate, Second Legislature, State of Hawaii, Intervenors-Defendants,

ELMER F. CRAVALHO, et al., Members of the House of Representatives, Second Legislature, State of Hawaii, Intervenors-Defendants.

DECISION AND ORDER—February 17, 1965

On August 13, 1964, the plaintiffs, citizens and residents of the State of Hawaii and qualified voters in their respective senatorial and representative districts, on their own behalf and as a class action on behalf of all other citizens, residents and voters in the State of Hawaii similarly situated, filed this complaint against William S. Richardson, Lieutenant Governor of Hawaii (he being responsible for the supervision of elections), seeking to enjoin Richardson from performing any duties relating to the nomination and election of candidates for State legislative offices unless the [fol. 371] State legislature enacted a valid reapportionment

plan for use in the 1964 elections, praying that this court should in any event make certain that the 1966 election would be conducted under an apportionment plan that would meet the requirements of the Fourteenth Amendment to the Constitution of the United States.

Plaintiffs alleged that the Constitution of the State of Hawaii apportioned the senate on the basis of geography and not population, and the house of representatives on the basis of registered voters and not population, and thus the State's scheme of apportionment was unconstitutional under the Fourteenth Amendment, in the light of *Reynolds* v. *Sims*, 377 U.S. 533 (1964), and its companion cases of the same date: *Maryland Committee* v. *Tawes, Lucas* v. *Colorado General Assembly, Davis* v. *Mann, WMCA* v. *Lomenzo* and *Roman* v. *Sincock.*

The Governor of the State, as well as all state legislators, both senators and representatives, filed their appearance as either intervening plaintiffs or defendants. (After the 1964 elections, all but one of the newly elected legislators likewise filed their appearance.)

A three-judge district court thereafter convened, found that it had jurisdiction under 28 U.S.C. Secs. 2201 and 2281 et seq., as well as under the Civil Rights Act, 42 U.S.C. Secs. 1983, 1988, and the court, after full hearing, on August 26, 1964, because of the imminence of the 1964 elections and the disruptive effects which an injunction would have had thereon, and because the State legislature at that date was convened in special session for the specific purpose of considering the problems of reapportionment, denied the motion for a preliminary injunction and set a hearing on the merits for January 11, 1965. (*Cf. Roman* v. *Sincock, supra.*) The legislature failed to agree on any reapportionment plan, [fol. 372] and this decision follows the January hearing.

The Constitution of the State of Hawaii, after being hammered out at a Constitutional Convention composed of nonpartisan delegates elected from all parts of the Territory, was adopted July 22, 1950, to become effective immediately upon the admission of Hawaii into the Union as a state.

Hawaii was so admitted on August 21, 1959. The Constitution prescribes a senate of 25 members, obviously and admittedly apportioned basically upon the geographical and political divisions of the State, and 51 representatives apportioned as hereinafter described.

Hawaii is unique in many respects. It is the only state that has been successively an absolute monarchy, a constitutional monarchy, a republic, and then a territory of the United States before its admission as a state. Because each was insulated from the other by wide channels and high seas (*C.A.B.* v. *Island Airlines,* —— F.Supp. —— (October 8, 1964)) and historically ruled first by chiefs and then royal governors, after annexation the seven major, inhabited islands of the State were divided up into the four counties of Kauai, Maui, Hawaii and the City and County of Honolulu.[1] All this resulted in a strongly centralized form of government.

By 1950, Honolulu, the State capital, had by far the largest population of any county, an essentially urban population, and had become an industrial, manufacturing, military and tourist center. The other three counties remained essentially rural and primarily concerned with agri- [fol. 373] culture and ranching. With the State having complete control over the judiciary, taxation, education, public health and welfare, etc., it was normal therefore that the three more rural counties of Kauai, Maui and Hawaii would not wish to leave such centralized power, particularly control over the State's purse strings, with urban Honolulu.

Patterning itself after the makeup of the United States Congress, Article III, Section 2 of the State Constitution apportioned the 25-member senate on a basis which enabled the senators of the three counties outside of Honolulu to have numerical control over that body. This was deliber-

[1] The artificial and isolated County of Kalawao has always been strictly a Hansen's disease treatment area, operated and controlled by the Board of Health of the Territory and State. It votes with Maui County for State Legislators.

ately done in order to preserve the then nationally approved concept of checks and balances between rural and urban populations.

By Article III, Section 4, the house of representatives was apportioned under "the method of equal proportions," i.e., the same method as used in apportioning the members of the House of Representatives of the United States Congress,[2] giving the representatives from the County of Honolulu, with its larger population, potential control of the house. Both single and multi-member representative districts were set up throughout the State.

Under this same Section 4, using the method of equal proportions, the State legislators were apportioned among the four "basic areas", viz., the four counties, on the basis of the number of voters registered at the last preceding general election, and within the counties each representative district had its representation determined by the same [fol. 374] method.

Under this same Section 4, the governor was mandated to reapportion the members of the house of representatives on or before June 1 of the year 1959, and at successive 10-year intervals thereafter. On May 1, 1959 (pursuant to Public Law 895, 84th Congress, 2nd Session), the Governor of Hawaii did reapportion the State in the above manner, and such reapportionment transferred increasing control to Honolulu.[3]

All parties before this court conceded (as was also determined by the Supreme Court of Hawaii in *Guntert* v. *Richardson*, 47 Hawaii —— (July 27, 1964)) that Article III, Section 2, relating to the composition and apportionment of the State senate is indisputably invalid under *Reynolds* v. *Sims, supra.*

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[2] Proceedings of the Constitutional Convention of Hawaii, Volume II (Proceedings), pp. 112-123. See also, *Reynolds* v. *Sims, supra*, note 10.

[3] After the Constitutional Convention, Congress put into permanent effect the reapportionment provisions of the proposed State Constitution. (*Davis* v. *Quinn*, 43 Hawaii 261, 269.)

From the inception therefore, it was obvious that Hawaii's Constitution must be amended, at least to provide for a valid apportionment of its senate. In connection with any constitutional reapportionment of the senate, it must be noted that Article XV (Revision and Amendment), Section 2, para. 6, contains the following proviso:

> " . . . provided, that no constitutional amendment altering this proviso or the representation from any senatorial district in the senate shall become effective unless it shall also be approved by a majority of the votes tallied upon the question in each of a majority of the counties."

As appears in the Proceedings, pp. 761-64, this proviso was specifically inserted in order to freeze representation in the senate, and it gave to the rural counties what amounted to the right of veto over any attempt to change the representative makeup of the senate. This proviso is so [fol. 375] closely tied in with the admittedly invalid scheme of senatorial apportionment that it, too, is likewise constitutionally invalid and falls along with Article III, Section 2.

Plaintiffs urge that Article III, Sections 3 and 4, relating to apportionment of the house, are likewise invalid because they are a part of the total scheme of legislative apportionment, inferring that the house would not have been apportioned as it was but for the senate being apportioned as a built-in check in setting up the "checks and balance" scheme of the United States Congress.

This Court finds that this is not necessarily true. Apart from one problem discussed immediately below, nothing has been called to our attention and we find no evidence—not even in the Proceedings—that the Constitutional Convention would have apportioned the house in any other way than it did.[4]

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[4] In connection with both the senate and the house of representatives, plaintiffs have claimed that the *number* of legislators in each house, viz., 25 and 51, are part of some invidious scheme. Exhibit

Plaintiffs urge that in any event, the house of representatives is unconstitutionally apportioned because apportionment thereof is based upon the number of voters registered at the last preceding general election (Art. III, Sec. 4), and not upon a gross, i.e., total population basis.

Article II, Sections 1 and 2, covering suffrage and elections, provides, in substance, that every literate United States Citizen who is compos mentis and not an unpardoned felon, 20 years old or more, residing in the State not less [fol. 376] than one year next preceding the election, and a registered voter, shall be qualified to vote. This Court finds nothing in Article II which is constitutionally invidious as discriminating against any one on the basis of race, color, creed, employment or geographical location, and as indicated in Article III, Sections 2 and 3, defining who may elect senators and representatives, it appears that the term "qualified voters" is used practically synonymously with registered voters under Article III, Section 4.

This court is not prepared at this time to accept plaintiff's premise that total population is the *only* basis upon which apportionment of state legislatures can constitutionally be based. The Court in *WMCA* v. *Lomenzo, supra,* notes that "New York uses citizen population instead of total population, excluding aliens . . . , for purposes of legislative apportionment" and apparently found nothing invidious in that fact. In *Maryland Committee* v. *Tawes, supra,* the Court said:

> "Rather, the proper, and indeed indispensable, subject for judicial focus in a legislative apportionment controversy is the overall representation accorded to the

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14, Table 14 clearly illustrates that there is no built-in magic or invidiousness in the use of such numbers. The matter of the size of each legislative body and the adoption of a 15-member senate and 31-member house, or a 21-member senate and 41-member house, as well as the ultimately approved 25-member senate and 51-member house were thoroughly explored by the Convention (Proceedings, pp. 89-101, 112-132).

> *State's voters,* in both houses of a bicameral state legislature." (Emphasis added.)

The Court thus re-expressed what it said in *Gray* v. *Sanders,* 372 U. S. 368, 379:

> "Once the geographical unit for which a representative is to be chosen is designated, *all who participate in the election* are to have an equal vote—whatever their race, . . . their income, and wherever their home may be in the geographical unit." (Emphasis added.)

The Court has said time after time throughout *Reynolds* v. *Sims, supra,* and the companion cases only that "both houses must be apportioned substantially on a population basis." (Emphasis added.)

Plaintiffs urge and have presented figures showing that [fol. 377] on the basis of the 1960, 1962 and 1964 population, the house of representatives is malapportioned. To begin with, paraphrasing *Guntert* v. *Richardson, supra,* 1950 and 1958 registered voters, and 1960, 1962 and 1964 population, are not comparable figures. The Court does not demand that legislatures be reapportioned annually. *Reynolds* v. *Sims, supra,* Subject VIII. This Court, at this time, can only determine if the basis of apportionment, when adopted in 1950 and when used for reapportionment in 1959, did in fact at those times result in apportionment "substantially on a population basis."

The Convention tried "to write into this Constitution a proposal that would not deny a single individual in this territory the right to suffrage." (Proceedings, p. 49) The basis of apportionment by population vs. registered voters was thoroughly discussed.

> "The idea among other things was to make the districts as nearly equal population-wise as possible . . . " (Proceedings, p. 107)
>
> . . . .

"One of the reasons why the reapportionment directed by the Organic Act[5] was not carried out was because that act required reapportionment on the basis of citizen population. A breakdown of the population according to this standard has not been locally available. Total population figures for the territory are shown by census tracts which do not necessarily coincide with locally defined areas. As a practical matter, the number of registered voters was found to bear a reliable and fairly uniform relationship to total population, although it favors slightly the neighbor islands where the percentage of persons who have registered to vote is from one to two per cent higher than for Oahu. It was in recognition of the potential difficulty in obtaining figures which would show citizen population, or figures which would show total population by desirable districts, that the basis for reapportionment of the members of the House was chosen as the number of registered voters." (Proceedings, p. 107)

[fol. 378] "The problem as stated in the report and as stated by the committee chairman this morning of using population in these districts is that it is next to impossible to obtain accurate population figures for the districts that we want to use or even for the old precincts or for any districts, unless you should take your representative districts to be the same districts that are used by the Census Bureau. Now it is quite possible that by the next census we could convince the Census Bureau that they should break their areas up into the areas that we may decide upon for representatives.

"... [I]n checking this over in the committee we found that there was actually percentage wise or using the method of equal proportions or anything else, very little difference whether we used registered voters, votes cast or population." (Proceedings, p. 124)

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[5] Organic Act, Secs. 60, 62.

The testimony of Robert Schmitt[6] (see Transcript of Proceedings of August 1964 hearings (TR) beginning p. 80) illustrated with certainty that the term "population" as determined by the Census Bureau was far from an accurate or reliable method of determining the true number of *residents* of a given area—at least in Hawaii.

> "The 1960 Census definition of population used in its compilation, . . . included all armed forces stationed ashore in Hawaii, regardless of their legal or voting residence. It included all men aboard ships in Hawaii ports on the census date . . . April 1st, 1960; that is [if] a ship tied up in Kapalama Basin or in Pearl Harbor, Ford Island, the entire crew of that ship was assigned to that geographic area.
> [fol. 379]
> "This was also true in the case of civilian ships. For example, the Ala Wai Yacht Harbor included a number of house boats and yachts which were enumerated in Hawaii." (TR 80)
>
> " . . . If the person on the night preceding the census had been there . . . each hotel or transient accommodation was enumerated . . .
>
> "[T]hey enumerated every person in Hawaii at that time, but they then reallocated them to their home states . . . " (TR 81)

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[6] Robert Schmitt: employed by the Department of Planning and Economic Development of the State of Hawaii; a member of the American Statistical Association; member of the Population Association of America and author of some 60 articles in professional journals; Research Development Analyst in charge of the Research Division of the Honolulu Redevelopment Agency for four years; in charge of research for the Seattle City Planning Commission; author and editor of the Statistical Abstracts of Hawaii; census tract key person for Honlulu of the U. S. Bureau of Census for many years; holds a Master's Degree from the University of Cincinnati, with additional graduate work from the University of Hawaii, University of Michigan and the University of Washington (TR 69-70).

"... We don't know how many were here at that time. *But we made an estimate* ... The Census Bureau did *not* report how many such persons were reallocated." (Emphasis added.) (TR 82)

"... There is no certainty how many were reallocated. We assume that all of them were." (TR 83)

"There were two ships [picked up in the 1960 census], one the Kiwishiwi ... and the other the Black Hawk ... [T]he total personnel of perhaps four hundred ... were assigned to [an area of Waikiki along the Ala Wai Canal] ... [H]ere we had approximately four hundred of the ship's crews ... classified as military ... who were assigned to this [Waikiki] enumeration district ...

"[I]n 1920 ... they inadvertently threw 3,000 Pearl Harbor people into the ... Honolulu judicial district." (TR 106-07)

"In 1960, the number of members of the Armed Forces ... was either 54,000 or 47,000 ... [or 42,122 if we subtract the 1960 civilian population of 590,650 from 632,772—See Ex. 14, p. 12], the census count was 47,000, and the Department of Defense counted 54,000." (TR 116)

Since the total civilian population of Hawaii (excluding the military) in 1960 was but 585,505 (Ex. 14, Table 12), it is seen that the military did account for about 10% of the total population. (1960 Census estimate, Ex. 15, Table 9.) Hawaii has become the United States' military bastion for the entire Pacific and the military population in the State fluctuates violently as the Asiatic spots of trouble arise and disappear. If total population were to be the only acceptable criteria upon which legislative representation could be based, in Hawaii, grossly absurd and disastrous results would flow from a blind adherence to "the elusive 'one-person-one-vote' aphorism." (Mr. Justice Har-

[fol. 380] lan in *Fortson* v. *Toombs,* —— U.S. —— (January 18, 1965).)

For example, if Hawaii's reapportionment year had been 1944, when the civilian population was 464,250 and the military population was 407,000, then areas which normally might have a total population entitling them to but a small percentage of the total number of legislators would suddenly find themselves controlling over 90% of the legislature—for the following ten years!

In contrast to the above, in 1950, with a civilian population of 472,780, there were but 21,000 military in Hawaii—less than 5%. In two years, this had jumped to 55,000. In 1958 there were 55,000 military, with a civilian population of 555,222. Two years later, there were 79,000 military in Hawaii. (Ex. 15, Table 11) As the plaintiffs have admitted, if the State were reapportioned at the present time on a straight total population basis, the *Fifth* senatorial district, containing within its bounds most of the military and naval installations of the State, would be entitled to 13 senators—a majority of the Senate!

A theoretical proposed redistricting of the City and County of Honolulu (Ex. 8) based on total population under the *1960* census, with the primary consideration being substantial equality of *total population,* gave Oahu 20 senators out of 25, and 41 representatives out of 51. (TR 189—Schmitt) A result of such proposed redistricting was that the largest representative district in point of population would be the one that included Schofield Barracks "in fact, it is completely Schofield Barracks," (TR 190) i.e., military population. Although it would thus become the largest representative district in the State, "in point of registered voters [it would be] the smallest district on the island." (TR 191) And Schmitt admitted, in testifying con-[fol. 381] cerning Exhibit 17, that it was possible in a single representative district so reapportioned on a total population basis, for such a district to have almost no voters at all.

This court does not have before it the problem presented to the Supreme Court of Hawaii in *In Re Robinson, Jr.*, No. 4465, Memorandum Opinion (October 30, 1964), rehearing granted January 18, 1965, viz., the question of whether a serviceman's residence on a Federal military reservation precludes him from establishing his residence in Hawaii. If he so desires to become a resident of Hawaii, this court can only state that there is nothing in the State Constitution or the Hawaii statutes which per se excludes members of the armed forces from establishing their residence in Hawaii and thereafter becoming eligible to vote. This court finds no scheme in Hawaii's Constitution or in the statutes implementing the exercise of franchise which is aimed at disenfranchising the military or any other group of citizens.

Not only does the fluctuating military population of the State make representation on the basis of total population politically suspect, but the large number of tourists[7] who continually flow in and out of the State and who, as above indicated, for census purposes are initially at least, counted as part of Hawaii's census population (10,000 estimated, 1960 census), would likewise result in gross inequity to citizens of the State eligible to vote, if total population were held to be the only constitutional basis for reapportionment in Hawaii.

[fol. 382] The difficulties undoubtedly faced by the Constitutional Convention in determining the best method to set up a system giving equality of representation is further illustrated by references contained in Exhibit 14 on statistics based on the year 1960—not the year 1950 when the Constitution was adopted, or 1959 when the house of representatives was reapportioned. Exhibit 14, Table 1 shows that the total *civilian* population as of July 1st, 1960 was 590,650, with 202,059 registered voters or 34.2% registered. Table 3

[7] The Hawaii Visitors Bureau statistics show that tourists in Hawaii, for overnight or longer, numbered—in 1950, 46,593; in 1958, 171,588; in 1960, 296,517; in 1962, 362,145; in 1964, 510,000 (preliminary figure).

shows the *total* population as 632,772, thus indicating but 31.9% of the population as having registered. Table 4, however, shows that out of the State population of 312,478 *United States citizens* (thus including the military) of voting age, the 202,059 registered voters accounts for 64.7% of all that class. Table 5 indicates that out of the *total* population age 20 or over (thus including non-citizens), of 360,193, 231,914 could qualify as being eligible to register. Thus even in 1960, the registered voters actually accounted for 87.1% of all of the possible *voting population* of the State of Hawaii.

That, in Hawaii, apportionment on a registered voter basis is not invidious per se, is further illustrated by Exhibit 14, Table 13, wherein it appears that 19 senators would be apportioned to Honolulu regardless of whether the basis was registered voters in the 1962 election or civilian population. Likewise, there is shown but a difference of two representatives (38-40) for Honolulu in such projected apportionment of the house, a difference which might result from the application of the method of equal proportions.

Hawaii's centralized education system has resulted in an unusually literate citizenry, and interest in politics and strong drives to bring out the vote have resulted in a vote of from 88 to 93.6% of all registered voters during [fol. 383] the elections of 1958, 1959,[8] 1960 and 1962. (Ex. 14, p. 12)

Representation based upon those eligible to vote, rather than registered voters, might conceivably have been a better solution, but neither in 1950 nor in 1958, as Schmitt testified (TR 96-98), was there statistical data available from which the necessary figures could have been gleaned and applied to the representative districts. As he also said, any attempt to determine the number of military personnel or their dependents who are eligible to vote in Hawaii by representative district "would strain the available statistical sources to the breaking point." (TR 98)

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[8] First political implementation under Statehood.

This Court does not hold that registered voters as a basis for representation is the perfect basis. Paraphrasing the words of the Court in *Fortson* v. *Dorsey,* —— U.S. —— this court finds the use of registered voters as a basis of apportionment did not, in Hawaii, in fact "designedly or otherwise . . . operate to minimize or cancel out the voting strength of [any] . . . elements of the voting population." (At p. ——) Nor did it in 1959 bring about that result.

As the records of the Constitutional Convention show (Proceedings 103-111), the districting, both for the senate and the house of representatives, followed along historical, political, geographic and physical lines. There was no gerrymandering in the invidious sense. As Dr. Schmitt testified (TR 96), the representative district lines sometimes cross statistical matters reported in the census, because the census divided up the State into census tracts. While for some of the cities of the State block statistics are available, nevertheless it is rather rare when the census [fol. 384] tract coincides with the precinct in an election district. "There seems to have been an unfortunate disregard of precinct boundaries and representative district boundaries in laying out the census tracts and vice versa." (TR 96)

Plaintiffs have pointed to the result of the redistricting in Representative Districts Nos. 1 and 2—Puna and South Hilo on the Island of Hawaii—as proof positive that the districting brought about a result condemned in *Reynolds* v. *Sims, supra,* as unconstitutional, in that in 1959, given a man-average per representative of 3437 voters, Puna with a 1958 registered voter population of but 2209 was given one representative and South Hilo with a registered voter population of 13,836 was given but three (i.e., 4459 voters per representative)—ergo an arbitrary and invidious dilution of the votes of the South Hilo voters! While the Court did state:

"It is inconceivable that a state law to the effect that, in counting votes for legislators, the votes of citizens

> in one part of the State would be multiplied by two, five, or 10, while the votes of person in another area would be counted only at face value, could be constitutionally sustainable",

this broad conclusion, however, was modified a few lines thereafter by the following:

> "Weighting the votes of citizens differently, by any method or means, *merely* because of where they happen to reside, hardly seems justifiable." *Reynolds* v. *Sims, supra.* (Emphasis added.)

As was also stated by Mr. Justice Black in *Colegrove* v. *Green,* 328 U.S. 549, 569-71:

> "[T]he constitutionally guaranteed right to vote and the right to have one's vote counted clearly imply the policy that state election systems, no matter what their form, should be *designed* to give *approximately* equal weight to each vote cast . . . " *Reynolds* v. *Sims, supra,* note 40. (Emphasis added.)

The record of the Proceedings (pp. 139, 141, 157) show [fol. 385] that in an endeavor to make all of the representative districts of the State large enough so that the figures would approach the 1950 common denominator of 2445, Puna (1st Representative District), when combined with Keaukaha (now in the 2nd Representative District) came to 2355. The delegates from South Hilo opposed this because geographically Keaukaha was separated from the nearest inhabited portion of Puna by a lava forest over six miles wide, traversed by but one road. It was an integral part of the City of Hilo, using that city's power, water, police, fire protection, schools and all public services. Its population was almost entirely of Hawaiian extraction; almost all of its inhabitants were employed only in Hilo; and basically, it had no community, ethnic or industrial bond or interest with Puna.

The voting population of Puna, on the other hand, was very predominantly of Japanese extraction, with no urban-

ization whatsoever, and with almost its entire population employed by one sugar plantation.

Keaukaha had 644 voters. It was recognized that the 1711 voters of Puna ethnically, industrially and socially were a cohesive unit, and such districting, as a matter of practical politics, would have left Keaukaha with *no* real representation.

> "[Keaukaha] was put in Puna in the first place . . . [in] . . . an effort to get a larger number of voters in the district that was going to elect one representative. It should be the natural thing to put it in South Hilo as [the delegates from Hawaii County] propose to do it now and it would not disturb the allocation of voters between Puna and South Hilo, and North Hilo and Hamakua." (Proceedings, p. 157)

As a matter of fact, also, neither in Puna nor in South Hilo did the resultant number of voters per representative, then or in 1959, violate the method of equal proportions. This court finds ample justification for and no invidious vote dilution in the above districting.

[fol. 386] As indicated above, this court cannot say that Hawaii's method of districting was part of any invidious scheme to disenfranchise any person or group, or to dilute the vote of any person. In hindsight, this court could say, as did Dr. Schmitt, that for the purpose of determining eligibility to vote in any precinct or district, it would be far easier to secure some such information if the districting and precinct lines also coincide with the census county divisions and census tracts. (TR 96)

There is nothing which appears in the Proceedings (pp. 173-74) to indicate that the ordering of reapportionment of the house in the year preceding that in which the census is normally taken was part of a scheme to dilute the vote of any person, rather, that year was used because the 5th Legislative Session after the Constitutional Convention would have terminated its work in May 1959. Since re-

apportionment was based upon registered voters, the census figures did not appear to the delegates to have any application.

Obviously, if the rights of the citizens of Hawaii are to be protected, the Constitution of the State of Hawaii must be amended—and amended before the 1966 general elections. The action of the legislature in failing to provide for reapportionment during its special session called for that purpose only last summer was disappointing to this court —and undoubtedly to the Supreme Court of Hawaii. See *Guntert* v. *Richardson, supra.*

As pointed out by the Supreme Court of Hawaii in *Guntert,* any change in the representation from any senatorial district must be by constitutional amendment. This court concurs!

Under Article XV, Section 3 of the Hawaii Constitution, [fol. 387] while the legislature may propose amendments to the Constitution, such amendments can only be voted on at a general election. If the legislature at its special reapportionment session of 1964 had proposed any reapportionment amendment, it could have been voted on in the 1964 election, but that legislature did not so act. Having determined that the senate at least, must be reapportioned before the 1966 general election, this court, in the inception, is now compelled to attempt to achieve that result by following the constitutional method provided under Article XV, Section 2. In the event that the constitutional route fails or, if followed, produced an invalid scheme of apportionment, only then would this or any other court be justified in attempting to assume the Herculean task of devising and enforcing a temporary reapportionment system.

In the event that a Constitutional Convention is convened, then in view of the questions and problems which have been raised before this court in this case, as well as before the Supreme Court of Hawaii in *Guntert* v. *Richardson, supra,* the delegates, in addition to providing for reapportionment of the senate, may also wish to reconsider the question of:

1. Whether it will continue to use registered voters as the apportionment basis, or change it to State citizen population eligible to vote (i.e., voter population), or citizen population, or total population.

2. Whether it is better to have one or both houses of the legislature composed of single member representative districts, or to have and justify[9] one or both houses composed, in whole or in part, of multi-member or floterial districts.

3. Whether decennial reapportionment of either or both [fol. 388] houses should be made on or before June 1st of the year preceding the Federal census—as is now the case —or on a date soon after the taking of such census.

4. Whether the representative district lines should remain substantially as they now are or whether ultimately (i.e., after 1970) there should be redistricting in such a manner that the census tracts and representative districts can be coordinated for the statistical purposes necessary to implement the changes (if any) made in the basis of reapportionment.

It Is Therefore Ordered, Adjudged and Decreed:

1. Those provisions of Article III, Section 2 of the Constitution of the State of Hawaii fixing the number of senators per senatorial district are hereby declared unconstitutional and invalid. The remainder of Article III of said constitution is declared constitutional and valid.

2. The proviso at the end of the sixth paragraph in Section 2 of Article XV pertaining to amendments affecting representation in the Senate is hereby declared unconstitutional and invalid. The remainder of Article XV is declared constitutional and valid.

3. The plaintiffs and intervening plaintiffs have failed to prove that the apportionment of the House of Repre-

[9] *Butcher* v. *Bloom*, 203 A.2d 556, 572-73.

sentatives of the Legislature of the State of Hawaii causes any invidious discrimination in the weight of their vote or that such apportionment is the result of arbitrary or capricious action. Their prayers for relief in this respect are therefore denied.

4. This court will not interfere with the convening or conducting of the business of the Third State Legislature in regular session in 1965, save and except that the parties [fol. 389] herein are hereby enjoined from taking final action upon any legislation, except such actions as are necessary to organize the respective houses at such session and appropriate funds for the session, until legislation, pursuant to the provision of Article XV of said Constitution providing for the submission to the people of Hawaii, by special election to be held not later than August 1, 1965, the question: "Shall there be a convention to propose a revision of or amendments to the constitution?", and for any and all acts required by law to implement such legislation, has been enacted into law. Such legislation shall also provide that if the vote be in the constitutional affirmative, then a special election shall be held not later than September 15, 1965 to elect delegates to the convention in the manner provided in the Constitution. Such legislation may include legislative action under Article XV, Section 2, 4th paragraph, of the Constitution. Such legislation shall further provide that the convention convene not later than October 15, 1965 and that it conclude its deliberation in time to submit its proposed constitutional amendments to the electorate of Hawaii at a special election to be held not later than January 30, 1966, including (but not limiting the convention thereto) provisions therein for reapportioning the Senate of Hawaii on a constitutionally valid basis. Such legislation shall also appropriate and make available funds for the expenses of such elections and convention.

5. The offices of all senators of the Hawaii State Senate are hereby declared vacant as of the day of the general election of 1966. Until such date, the existing offices of all

senators elected under Article III, Section 2 of the Constitution, shall be valid.

6. This court retains jurisdiction of this action for all purposes, including but not limited to (a) considering [fol. 390] such sanctions as may be appropriate if the orders of this court are not carried out; (b) judicially reapportioning the Senate in the event that the electors of Hawaii reject a constitutional convention, or the convention fails to propose an amendment reapportioning the Senate, or the electors reject such an amendment, or if any amendment of the convention does not insure the apportionment of the Hawaii State Legislature in accordance with the requirements of the Equal Protection Clause of the 14th Amendment to the Constitution of the United States.

7. All other relief prayed for in the Complaint, Complaint in Intervention, and Cross Complaint is hereby denied.

Dated: Honolulu, Hawaii, this 17th day of February, 1965.

Gilbert H. Jertberg, Circuit Judge.
William T. Beeks, District Judge.
Martin Pence, District Judge.

[File endorsement omitted]

[fol. 393] [File endorsement omitted]

[fol. 394]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

Civil No. 2308

HENRIETTA DAVIDSON HOLT, et al., Plaintiffs,

vs.

WILLIAM S. RICHARDSON, Lieutenant Governor of Hawaii, Defendant,

JOHN J. HULTEN et al., Intervenors-Plaintiffs,

NELSON K. DOI et al. and ELMER F. CRAVALHO et al., Intervenors-Defendants.

NOTICE OF MOTION TO ALTER OR AMEND JUDGMENT —Filed March 1, 1965

To: Charles M. Tonaki and Barry J. Rubin, Suite 1021, First National Bank Bldg., Honolulu, Hawaii.

Masaji Marumoto, 235 Queen Street, Honolulu, Hawaii.

Bert T. Kobayashi, Iolani Palace Grounds, Honolulu, Hawaii.

Robert G. Dodge, Trustco Bldg., Honolulu, Hawaii.

Frank D. Padgett, Castle & Cooke Bldg., Honolulu, Hawaii.

Please take notice that the undersigned will bring the above motion to alter or amend the judgment on for hearing before this Court at the Federal Building, Honolulu,

[fol. 395] Hawaii, on the 9th day of March, 1965, at 10:00 A.M. or as soon thereafter as counsel may be heard.

Dated: Honolulu, Hawaii, March 1, 1965.

James T. Funaki, Attorney for Intervenors-Defendants, Elmer F. Cravalho et al., 400 International Savings Bldg., Honolulu, Hawaii.

Robert Kimura, Attorney for Intervenors-Defendants, Nelson K. Doi et al., Office of the Senate Majority Attorneys, Schuman Bldg., Honolulu, Hawaii.

[fol. 396]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

Civil No. 2308

[Title omitted]

MOTION TO ALTER OR AMEND JUDGMENT—Filed March 1, 1965

Intervenors-Defendants move the court to alter or amend the judgment heretofore entered in this action, by amending item 4 at the bottom of page 19 and on page 20 of the Decision and Order, and item 6 on pages 20 and 21 of the Decision and Order to read as follows:

"4. In consonance with the reapportionment plan for the Senate, set forth in Senate Concurrent Resolution No. 35, adopted by the Legislature of the State of Hawaii on March 1, 1965, the Senate shall be apportioned on the basis of the number of voters registered at the 1964 general election. Such apportionment and the redistricting plan for the Senate referred to hereinbelow shall apply to the 1966 elections and until an appropriate constitutional amendment shall have been effected.

[fol. 397] "The legislators-parties herein are hereby enjoined from taking final action upon any legislation, except such actions as are necessary to organize the respective houses at such session and appropriate funds for the session, until the State legislature in regular session in 1965:

"(a) shall have adopted a redistricting plan for the Senate on the basis of 1964 registered voters and the same shall have been approved by the court;

"(b) shall have adopted a proposed constitutional amendment embodying pertinent provisions of the foregoing reapportionment and redistricting plans, to be presented to the electorate for ratification at the 1966 general election, and the same shall have been approved by the court; and

"(c) shall have enacted legislation, pursuant to the provisions of Article XV of the State Constitution, providing for submission to the people of Hawaii at the general election of 1966 the question: 'Shall there be a convention to propose a revision of or amendments to the constitution?'.

"If the measures set forth in paragraphs (a), (b), and (c) above shall not have been adopted by the legislature on or before the twentieth calendar day following the date of the order granting the motion to amend the said Decision and Order, and the same thereafter shall not have been approved by the court, then item 4 on pages 19 and 20 and item 6 on pages 20 and 21 of the Decision and Order dated February 17, 1965, shall be reinstated and remain in full force and effect as if the motion to amend the same had not been granted.

[fol. 398] "• • •

"6. This court retains jurisdiction of this action for all purposes including but not limited to:

"(a) considering such actions as may be appropriate if the orders of this court are carried out; and

"(b) judicially prescribing a reapportionment or redistricting plan for the Senate whenever appropriate."

This motion is based on the Statement of Reasons and Authorities, which is attached hereto, and Senate Concurrent Resolution No. 35 of the Third Legislature of the State of Hawaii, General Session of 1965, adopted on March 1, 1965.

Dated: Honolulu, Hawaii, March 1, 1965.

James T. Funaki, Attorney for Intervenors-Defendants, Elmer F. Cravalho et al., 400 International Savings Bldg., Honolulu, Hawaii.

Robert Kimura, Attorney for Intervenors-Defendants, Nelson K. Doi et al., Office of the Senate Majority Attorneys, Schuman Bldg., Honolulu, Hawaii.

[fol. 399]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

Civil No. 2308

[Title omitted]

STATEMENT OF REASONS AND AUTHORITIES—Filed March 1, 1965

This motion is brought in accordance with Rule 59(e) of the Federal Rules of Civil Procedure, which provides:

"Motion to Alter or Amend a Judgment. A motion to alter or amend the judgment shall be served not later than 10 days after entry of the judgment."

On February 17, 1965, this Court "ordered, adjudged and decreed," among other things, that the legislature provide for (1) a special election at which the question: "Shall

there be a convention to propose a revision of or amendments to the constitution?" shall be submitted to the people; (2) a special election to elect delegates to a constitutional convention; (3) convening of the constitutional convention; and (4) a special election for ratification of amendments proposed by the convention.

The motion to alter or amend is made for the following reasons:

[fol. 400] (1) As indicated at the hearing before this Court, the three special elections will cost nearly half a million dollars. It is estimated by the Department of Budget and Finance, State of Hawaii, that the total cost of the constitutional convention and of the three special elections will be in excess of one million dollars.

(2) The holding of three special elections and a convention in a period of six months will be unduly cumbersome.

(3) The convention will not be limited to consideration of amendments to senatorial reapportionment and might be diverted from its primary task.

(4) Under Article XV, section 2, of the State Constitution, the Lieutenant Governor is mandated to submit to the people at the 1970 general election the question of whether a convention to amend or revise the constitution shall be held. Such a convention is intended to and would have the time and facilities to consider the entire constitution and any amendments or revisions thereof.

As indicated in Senate Concurrent Resolution No. 35, it is contemplated that the question of whether a constitutional convention is to be held will be submitted to the people at the 1966 general election.

(5) The end sought to be achieved is a proper apportionment of the Senate on the basis of registered voters. The cost of a constitutional convention is grossly disproportionate to the end sought which can be equitably,

[fol. 401]

speedily and economically achieved by the amendment prayed for.

Dated: Honolulu, Hawaii, March 1, 1965.

Respectfully submitted,

James T. Funaki, Attorney for Intervenors-Defendants, Elmer F. Cravalho et al., 400 International Savings Bldg., Honolulu, Hawaii.

Robert Kimura, Attorney for Intervenors-Defendants, Nelson K. Doi et al., Office of the Senate Majority Attorneys, Schuman Bldg., Honolulu, Hawaii.

[fol. 410] [File endorsement omitted]

[fol. 411]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

Civil No. 2308

[Title omitted]

MOTION TO AMEND MOTION TO ALTER OR AMEND JUDGMENT AND ORDER THEREON—March 5, 1965

Intervenors-Defendants move the Court to amend their Motion to Alter or Amend Judgment filed herein on March 1, 1965, by inserting the word "not" between the words "are carried" on the second line of the quoted subparagraph 6(a) on page 3 of said Motion.

This Motion is to correct an inadvertent typographical omission.

[fol. 412] Dated: Honolulu, Hawaii, March 5, 1965.

James T. Funaki, Attorney for Intervenors-Defendants, Elmer F. Cravalho, et al., 400 International Savings Bldg., Honolulu, Hawaii.

Robert Kimura, Attorney for Intervenors-Defendants, Nelson K. Doi, et al., Office of the Senate Majority Attorneys, Schuman Bldg., Honolulu, Hawaii.

ORDER

The foregoing Motion to Amend Motion to Alter or Amend Judgment is approved and allowed.

Martin Pence, Judge of the above entitled Court.

[fol. 454]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

Civil No. 2308

[Title omitted]

FINAL ORDER ON MOTION TO ALTER OR AMEND JUDGMENT—March 9, 1965

As stated in this court's Decision and Order of February 17, 1965, a plan reapportioning the Senate of Hawaii must be operative for the 1966 general election, and this court did not in February and does not now wish to assume the task of devising a reapportionment scheme. Faced with the legislature's failure to act during its special reapportionment session of 1964, this court then felt compelled to channel reapportionment measures into the constitutional convention route.

Based upon the current actions of the legislators, followed by the representations by counsel for all parties to this suit that all are in accord with the objectives outlined in the motion to alter or amend judgment, this court is now convinced that the legislative climate has changed and that the legislators presently in session are now prepared to undertake the formulation of a plan for reapportioning the Senate which can be Constitutionally justified. From the

representations made, this court is satisfied that the multi-
[fol. 455] ple and accelerated special elections and a constitutional convention would cost well over $1,000,000, strain the State's election machinery, and force an as-yet-unsought-for constitutional convention upon the people of Hawaii, with attendant loss of time to the delegates.

This court is therefore prepared to grant the motion of intervenor-defendants Nelson K. Doi et al., and Elmer F. Cravalho et al., to alter the court's Decision and Order of February 17, 1965.

It Is Therefore Ordered, Adjudged and Decreed that this court's order of February 17, 1965 be and is hereby altered in the following particulars. Item 4 beginning at the bottom of page 19, and item 6 beginning at the bottom of page 20, are amended to read as follows:

"4. The Senate shall be apportioned on the basis of the number of voters registered at the 1964 general election substantially in the manner outlined by the reapportionment plan for the Senate, set forth in Senate Concurrent Resolution No. 35, adopted by the Legislature of the State of Hawaii on March 1, 1965, and attached to the Motion to Alter or Amend Judgment filed in this court on March 1, 1965. Any such reapportionment plan shall apply to the 1966 elections and thereafter until an appropriate and legal constitutional amendment shall become effective.

"In furtherance of the above, the legislators and parties herein are enjoined from taking final action upon any legislation, except such actions as are necessary to organize the respective houses at such session and appropriate funds for the session, until the State legislature in regular session in 1965:

"(a) shall have enacted a reapportionment and redistricting plan for the Senate on the basis of 1964 registered voters (and applicable to the 1966 elections) and the same shall have become law;

[fol. 456] "(b) shall have adopted a proposed constitutional amendment embodying pertinent provisions of

the foregoing reapportionment and redistricting plan, to be presented to the electorate for ratification at the 1966 general election, in the manner provided by Article XV, Section 3, of the State Constitution; and

"(c) shall have enacted legislation, pursuant to the provisions of Article XV of the State Constitution, providing for submission to the people of Hawaii at the general election of 1966 the question: 'Shall there be a convention to propose a revision of or amendments to the Constitution?'."

"After (a), (b) and (c) shall have been enacted and adopted, and made operative, the same shall thereupon be submitted to this court for approval.

"If the measures set forth in paragraphs (a), (b) and (c) above shall not have been enacted and adopted by the legislature on or before the twentieth calendar day following the date of the order granting the motion to amend the said Decision and Order, and made operative, and if the same after hearing shall not have been approved by the court, then, as far as then and thereafter applicable, item 4 on pages 19 and 20 and item 6 on pages 20 and 21 of the Decision and Order dated February 17, 1965 shall become automatically reinstated and thereafter remain in full force and effect as if the Motion to Amend the same had not been granted.

* * * * * * *

"6. This court retains jurisdiction of this action for all purposes, including but not limited to:

"(a) considering such sanctions as may be appropriate if the orders of this court are not carried out; and

"(b) judicially reapportioning and redistricting the [fol. 457] Senate, in the event that the obligations of the parties above indicated are not fulfilled, or any reapportionment plan so enacted is not approved by the

court, or the electors of Hawaii at the 1966 general election reject the proposed and court-approved constitutional amendment reapportioning the Senate, or under any other circumstances which this court shall deem appropriate."

In all other respects this court's Decision and Order of February 17, 1965 is reaffirmed.

Dated: Honolulu, Hawaii, this 9th day of March, 1965.

Gilbert H. Jertberg, Circuit Judge, William T. Beeks, District Judge, Martin Pence, District Judge.

[fol. 479] [File endorsement omitted]

[fol. 480]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

Civil No. 2308

[Title omitted]

MEMORANDUM OF GOVERNOR'S POSITION ON SENATE REAPPORTIONMENT UNDER HOUSE BILL NO. 773, SENATE DRAFT 1—Filed March 24, 1965

1. The division of the neighbor islands into one- or two-member senatorial districts and of Oahu into a nine-member district and a ten-member district is arbitrary and capricious, unfairly weights the voting and representation in favor of Oahu voters and so is invidiously discriminatory and violative of the equal protection clause in the Fourteenth Amendment.

H.B. 773, S.D. 1, proposes an amendment to the Hawaii State Constitution that would apportion the State Senate as follows:

First senatorial district—Puna, Hilo, and Hamakua in the County of Hawaii:	2
Second senatorial district—Kau, Kona, and Kohala in the County of Hawaii:	1
Third senatorial district—County of Maui:	2
Fourth senatorial district—part of the City and County of Honolulu:	9
Fifth senatorial district—remainder of the City and County of Honolulu:	10
Sixth senatorial district—County of Kauai:	1
	25

[fol. 481] We respectfully submit that such apportionment violates the equal protection clause of the Fourteenth Amendment to the United States Constitution.

We are aware that courts have "recognized that legislative reapportionment is primarily a matter for legislative concern and determination" (*Reynolds* v. *Sims,* 377 U.S. 533, 586), and traditionally have observed restraint in passing judgment thereon. However, where a legislative apportionment scheme is invidiously discriminatory, the courts, at least since 1962, have not hesitated to provide relief. *Baker* v. *Carr,* 369 U.S. 186; *Reynolds* v. *Sims,* 377 U.S. 533; *WMCA, Inc.* v. *Lomenzo,* 377 U.S. 633; *Maryland Committee* v. *Tawes,* 377 U.S. 656; *Davis* v. *Mann,* 377 U.S. 678; *Roman* v. *Sincock,* 377 U.S. 695; *Lucas* v. *Colorado General Assembly,* 377 U.S. 713.

As stated in *Baker* v. *Carr,* 369 U.S. 186, 226:

> "Judicial standards under the Equal Protection Clause are well developed and familiar, and it has been open to courts since the enactment of the Fourteenth Amendment to determine, if on the particular facts they must, that a discrimination reflects *no* policy, but simply arbitrary and capricious action." (Emphasis in text.)

On the application of the concept of equal protection to legislative apportionment and representation, the United

States Supreme Court in *Reynolds* v. *Sims* has stated the following principles:

> ". . . [T]he concept of equal protection has been traditionally viewed as requiring the uniform treatment of persons standing in the same relation to the governmental action questioned or challenged. With respect to the allocation of legislative representation, all voters, as citizens of a State, stand in the same relation regardless of where they live. Any suggested criteria for the differentiation of citizens are insufficient to justify any discrimination, as to the weight of their votes, unless relevant to the permissible purposes of legislative apportionment. Since the achieving of fair and effective representation for all citizens is [fol. 482] concededly the basic aim of legislative apportionment, we conclude that the Equal Protection Clause guarantees the opportunity for equal participation by all voters in the election of state legislators. Diluting the weight of votes because of place of residence impairs basic constitutional rights under the Fourteenth Amendment just as much as invidious discriminations based upon factors such as race, *Brown* v. *Board of Education,* 347 U.S. 483, or economic status, *Griffin* v. *Illinois,* 351 U.S. 12, *Douglas* v. *California,* 372 U.S. 353. . . ." 377 U.S. at 565-566.

Specifically, in *Reynolds* v. *Sims,* 377 U.S. 533, the court has indicated some guidelines relating to size of legislative districts:

> "By holding that as a federal constitutional requisite both houses of a state legislature must be apportioned on a population basis, we mean that *the Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable.* We realize that it is a practical impossi-

bility to arrange legislative districts so that each one has an identical number of residents, or citizens, or voters. Mathematical exactness or precision is hardly a workable constitutional requirement." *Id.* at 577.

"... Single-member districts may be the rule in one State, while another State might desire to achieve some flexibility by creating multimember or floterial districts. *Whatever the means of accomplishment, the overriding objective must be substantial equality of population among the various districts, so that the vote of any citizen is approximately equal in weight to that of any other citizen in the State.*" *Id.* at 579. (Emphasis added.)

It is true that in *Reynolds,* the court was concerned primarily with discrimination resulting from apportionment that was not based on population. However, the principles enunciated in that case, we submit, are also applicable to discrimination resulting from arbitrary districting.

The Supreme Court of Pennsylvania in *Butcher* v. *Bloom,* 203 A.2d 556, even while holding that a mixture of single-member districts with two-, three-, or four-member districts (but with no district that was so overwhelmingly large that [fol. 483] it dominated a house) was not per se unconstitutional, stated:

"While we do not believe that the creation of multi-member districts of itself, would violate the Federal Constitution simply because the voters in a particular district (where justified by population) would vote for two or more representatives while those in another district would vote for a lesser number, *we do believe that a legislative scheme which creates single-member districts and multi-member districts in an arbitrary manner would be objectionable.* We would agree with the district court, however, that in the absence of any reasonable justification (historical or otherwise), such districting might be the result of gerrymandering for

partisan advantage and, in that event, would be arbitrary and capricious. . . ." *Id.* at 572-573. (Emphasis added.)[1]

Each voter, no matter where he lives, stands as a citizen and voter in the same relation to any other voter in the State. Each is entitled to "fair and effective" representation and has the right to equal participation in the election of legislators.

There is no rational justification for the difference in treatment of voters in the counties of Hawaii, Maui and Kauai vis-a-vis voters on Oahu.

There is no rhyme or reason for districting the neighbor island counties into one- and two-member senatorial districts and the City and County of Honolulu into a nine-member and a ten-member senatorial district; it goes far beyond any reasonably acceptable norm. Such districting is arbitrary and capricious; such overwhelming and disproportionate size of the two Oahu districts unfairly weights the votes and representation of Oahu voters and denies fair and effective representation to voters in the neighbor island senatorial districts.

[fol. 484] Apportionment that is not based on population is not the only means by which invidious discrimination may take place. Invidious discrimination can also result from arbitrary and unreasonable districting, even if the apportionment is in proportion to population.

Under the proposed plan, the voters in the ten-senator district would vote for and elect not two, three or four, but ten senators who would be looking after their interests and who would constitute 40 percent of the Senate. With only three additional votes, the delegation from the fifth senatorial district could control the Senate. So could the fourth senatorial district delegation with four additional votes.

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[1]The United States Supreme Court referred to the *Butcher* case with apparent approval in *Scranton* v. *Drew*, decided on November 16, 1964, 33 LW 3181.

The concentration of voting strength in either of these districts would overwhelm the smaller districts.

Contrast the weight of the vote of a voter in such a large district with that of a voter in a one- or two-senator district. The weight of a vote in a one- or two-senator district in contrast would yield such meager representation and would be so diluted that a voter in such a district may, not without reason, decide that it is not worth his while to go to the polls. By no stretch of the imagination can it be said that he enjoys "equal participation . . . in the election of state legislators" (*Reynolds* v. *Sims, id.* at 566), with voters in the fourth and fifth senatorial districts, or "fair and effective" representation. (*Id.* at 565.)

The lopsided districting in H.B. 773 cannot be justified on any historic, geographic or other basis. The fact that Hawaii has had a similar type of senatorial districting under the Organic Act and under the State Constitution offers no justification. Such districting was based on circumstances not analogous to those in the present case. [fol. 485] The senatorial apportionment under the Organic Act just prior to statehood, as well as under the State Constitution, was based on geographic representation, not population representation, and the number of senators from each senatorial district was fairly even.[2]

Districting based on geographic representation (which basis of representation has been held to be unconstitutional), is not a valid justification for apportionment based on population, when it results in lopsided district representation, as in the instant situation.

The fact that the counties are separated by ocean waters is not a valid consideration here.

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[2] Article III, section 2, of the State Constitution provides for the following:

First senatorial district (Hawaii), five senators;
Second senatorial district (Hawaii), two senators;
Third senatorial district (Maui), five senators;
Fourth senatorial district (Oahu), five senators;
Sixth senatorial district (Kauai), three senators.

Furthermore, there is nothing to indicate that division of Oahu into smaller senatorial districts is not practicable.

The subject plan unfairly weights the votes of voters living in the fourth and fifth senatorial districts and unjustifiably dilutes the votes and the representation of voters living in the four other senatorial districts by means of a districting scheme that is arbitrary and capricious. Accordingly, it violates the equal protection clause of the Fourteenth Amendment.

[fol. 486]

2. Within a disproportionately large district, equal protection is denied by submergence of minority groups by a lack of identifiable constituencies, by an unreasonably long ballot and the likelihood of election of legislators by substantially less than a majority of the votes cast in the district.

It is a basic principle in a representative democracy that the people elect persons to represent them, to speak in their stead and to make the laws by which they are to live. This assumes that each legislator will have an identifiable constituency, and presupposes that the legislators will be elected by a majority of the people within each district. In a district as large as the fourth or fifth senatorial district, this basic principle is grossly subverted.

Within both of the oversize districts, we find all of the shortcomings of the Colorado plan that the United States Supreme Court criticized in *Lucas* v. *Colorado General Assembly,* 377 U.S. 713, 731:

> ". . . One of the most undesirable features of the existing apportionment scheme was the requirement that, in counties given more than one seat in either or both of the houses of the General Assembly, all legislators must be elected at large from the county as a whole. Thus, under the existing plan, each Denver voter was required to vote for eight senators and 17 representatives. Ballots were long and cumbersome,

> and an intelligent choice among candidates for seats in the legislature was made quite difficult. No identifiable constituencies *within* the populous counties resulted, and the residents of those areas had no single member of the Senate or House elected specifically to represent them. Rather, each legislator elected from a multimember county represented the county as a whole."[3] (Emphasis in text.)

[fol. 487] A voter living in the fifth senatorial district and tenth representative district would be required to vote for ten senators, four representatives, seven city councilmen, not to mention the board of education, the school advisory council and other elected officers.

The ballot would be long and cumbersome and it would be difficult for him to know the qualifications of the candidates and to vote intelligently. He may be forced to vote for candidates whom he does not know well enough or vote a short ballot for those candidates whom he does know. The problem would be multiplied in the primary elections because there is no limitation on the number of candidates running for nomination.

Moreover, in a single-member district with two candidates running, one must obtain a majority of the votes to win. Mathematically, the larger the number of candidates and/or the number of seats to be filled on a district-wide basis (compounded by short-ballot voting), the greater the likelihood that legislators may be elected with less than a majority of the votes cast, and often substantially less than a majority.

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[3] The court's footnote that "We do not intimate that apportionment schemes which provide for the at-large election of a number of legislators from a county, or any political subdivision, are constitutionally defective. . . ." does not mean, we submit, that any election at large on a county or sub-county basis regardless of the relative size of the districts would be constitutionally valid.

We note that in the Colorado plan, the City and County of Denver was apportioned *8 out of 35* Senate seats, and *17 out of 65* House seats. 377 U.S. at 724. It does not exhibit the type of lopsided districting here in question.

In a ten-member district covering a large area, a well-organized group could dominate the outcome of the election to the exclusion and submergence of ethnic, political or economic minority groups that could have obtained representation if the districts were smaller.

In this instance, a voter in a relatively sparsely populated section in the fifth senatorial district, such as the Waianae section, might properly complain that his vote is being submerged by the concentrated vote of those living in the more urban areas of the district. With smaller dis-
[fol. 488] tricts he would have had a better chance of being represented by persons of his choosing. The State would be losing the diversity of points of view that contribute to viable state government.

The plan in issue violates the equal protection clause in that it denies fair and effective representation of elements within the disproportionately large districts.

[fol. 489]

3. *Fortson* v. *Dorsey* is clearly distinguishable and not directly pertinent here.

Fortson v. *Dorsey,* —— U.S. ——, 33 L.W. 4143, decided by the United States Supreme Court on January 18, 1965, is clearly distinguishable. The Georgia Senate there in question consisted of 54 senatorial districts, each of them substantially equal in population. Thirty-three of these were single-member districts. The remaining 21 districts were allotted in groups consisting of from two to seven senatorial districts among the seven most populous counties.

The largest such group—Fulton County—consisted of seven senators out of 54, a far cry from the ten out of 25 or nine out of 25 in the instant case. Moreover, the Georgia plan required that, though the senatorial districts in the larger counties were consolidated and elections were held county-wide, the candidates had to come from the respective senatorial districts. This tended to assure that the individual senatorial districts within a county would not be submerged.

Furthermore, the primary contention was not that a person in a single-member district is unwarrantedly discriminated against, as compared to a person in an oversize multi-member district, as it is in the case at bar. Rather, the reverse contention was made—that a voter in a multi-district county having county-wide elections is at a disadvantage compared to a voter in a single district constituency because such county-wide voting could result in the nullifica-
[fol. 490] tion of the unanimous choice of the voters of a district, thereby thrusting upon them a senator for whom no one in the district had voted.

Finally, the court's holding was that it could not say that the multi-member constituency feature of the Georgia scheme was per se unconstitutional, without any showing that it would operate to minimize or cancel out the voting strength of any element in the voting population.

In contrast, in the case at bar there is ample showing that the districting plan is arbitrary and unreasonably discriminatory, and dilutes the voting strength and representation of persons in the one- and two-member districts.

[fol. 491]

4. Conclusion and Recommendations.

For the foregoing reasons, we submit that the districting plan in H. B. 773, S. D. 1, violates the equal protection clause of the Fourteenth Amendment.

We recommend that the court therefore declare that such redistricting plan is not acceptable, and return to the legislature:

(a) H.B. 987, S.D. 1 (providing for provisional reapportionment of the Senate), for the Senate to reconsider its third reading of the bill, appropriately amend the provisions for districting on Oahu, with concurrence of the House of Representatives, and repass it on third reading, and after the same becomes law, to submit it to the court for approval.

(b) H.B. 773, S.D. 1 (providing for constitutional amendment), for the Senate to appropriately amend the provi-

sions for districting on Oahu, and to submit it to the court for approval.

Relative to H.B. 773, we recommend that the twenty-day period ending March 29, 1965, within which the court has required that the legislation be enacted, be extended for a period long enough to permit adoption of a constitutional amendment. In this connection it is to be noted that the State Constitution provides that for adoption by the legislature at one session, a constitutional amendment must pass by a two-thirds vote of each house after either or both houses have given the governor ten days' written notice of the final form of the proposed amendment (Article XV, section 3).

If the legislature fails to adopt and submit a valid provisional plan within the time prescribed, we recommend that [fol. 492] the court adopt as a provisional plan one of the districting plans for Oahu that are being considered by the legislature or any other plan that it finds to be valid. Such plan would remain in effect until a valid constitutional amendment is effected.

If the legislature fails to adopt a proper constitutional amendment, we recommend that pursuant to H.B. 986, the question, "Shall there be a convention to propose a revision of or amendments to the Constitution?" be submitted to the people at the 1966 general election, and that attempts at constitutional amendment by legislation be abandoned.

Dated: Honolulu, Hawaii, March 24, 1965.

Respectfully submitted,

Bert T. Kobayashi, Attorney General, State of Hawaii

[fol. 530] [File endorsement omitted]

[fol. 531]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

Civil No. 2308

[Title omitted]

ADDENDUM TO GOVERNOR'S MEMORANDUM—
Filed March 25, 1965

Because of limitations of time we did not include in our memorandum filed yesterday, certain information in further support thereof, and with the court's indulgence, submit the following information at this time:

The composition, place of residence, profession, ethnic background, and political party affiliation of the incumbent senators from the fourth and fifth senatorial districts are as follows:

Fourth Senatorial District

Senators	Residence Rep. Dist.	Profession	Race	Party*
O. Vincent Esposito	15th	Attorney	Caucasian	D
Yasutaka Fukushima	15th	Attorney	Japanese	R
Anna F. Kahanamoku	17th	Business-woman	Part-Hawaiian	D
D. Hebden Porteus	15th	Attorney	Caucasian	R
Vincent H. Yano	16th	Attorney	Japanese	D

* D—Democratic; R—Republican.

[fol. 532]

*Fifth Senatorial District**

Senators	Residence Rep. Dist.	Profession	Race	Party*
George R. Ariyoshi	12th	Attorney	Japanese	D
John J. Hulten	8th	Business-man	Caucasian	D
Mitsuyuki Kido	10th	Business-man	Japanese	D
Sakae Takahashi	12th	Attorney	Japanese	D

Dated: Honolulu, Hawaii, March 25, 1965.

Respectfully submitted,

Bert T. Kobayashi, Attorney General, State of Hawaii.

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* Senator Patsy T. Mink and her successor, Senator Taylor A. Pryor, are not included.

[fol. 536] [File endorsement omitted]

[fol. 537]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

Civil No. 2308

[Title omitted]

SUBMISSION OF PROPOSED CONSTITUTIONAL AMENDMENTS ADOPTED AND LEGISLATION ENACTED PURSUANT TO MINUTE ORDER DATED MARCH 9, 1965, AS AMENDED—Filed April 14, 1965

Come now Intervenors-Defendants Elmer F. Cravalho et al and Intervenors-Defendants Nelson K. Doi et al, in pursuance of the Minute Order dated March 9, 1965, as amended, of this Court, and submit herewith the following:

1. H. B. No. 987, S. D. 1, C. D. 1, being a reapportionment and redistricting plan for the Senate on the basis of

1964 registered voters (and applicable to the 1966 elections), together with the conference committee reports therefor, attached hereto as Exhibit "A" and made a part hereof; and

[fol. 538] 2. H. B. No. 773, S. D. 1, C. D. 1, being a proposed constitutional amendment embodying pertinent provisions of the reapportionment and redistricting plans as set forth in H. B. No. 987, S. D. 1, C. D. 1, to be presented to the electorate for ratification at the 1966 general election, together with the conference committee reports therefor, attached hereto as Exhibit "B" and made a part hereof; and

3. H. B. No. 986, being legislation pursuant to the provisions of Article XV of the State Constitution, providing for submission to the people of Hawaii at the general election of 1966 the question: "Shall there be a convention to propose a revision of or amendments to the constitution?", attached hereto as Exhibit "C" and made a part hereof.

The reason and justification for the reapportionment and redistricting plan for the Senate as set forth in H. B. No. 987, S. D. 1, C. D. 1, and H. B. No. 773, S. D. 1, C. D. 1, are covered in the conference committee reports attached thereto.

Intervenors-Defendants herein further submit certificates, attached to the abovementioned bills, issued by the President of the Senate and the Speaker of the House of Representatives and the clerks of the Senate and the House respectively, certifying that the said bills have been duly adopted and enacted.

[fol. 539] Dated: Honolulu, Hawaii, April 14, 1965.

James T. Funaki, Attorney for Intervenors-Defendants, Elmer F. Cravalho et al, Office of the House Majority Attorneys, Schuman Building, Honolulu, Hawaii.

Robert Kimura, Attorney for Intervenors-Defendants, Nelson K. Doi et al, Office of the Senate Majority Attorneys, Schuman Building, Honolulu, Hawaii.

[fol. 540]

EXHIBIT "A"

CONF. COM. REP. NO. 2

Honolulu, Hawaii
April 13, 1965

Re: H. B. No. 987
S. D. 1

The Honorable Kazuhisa Abe
President of the Senate
Third Legislature
General Session, 1965
State of Hawaii

Sir:

Your Conference Committee to which was referred H. B. No. 987, S. D. 1 entitled: "A BILL FOR AN ACT PROVIDING FOR THE PROVISIONAL REAPPORTIONMENT OF THE SENATE OF THE STATE OF HAWAII", begs leave to report as follows:

The purpose of this bill is to provide for a provisional reapportionment of the State Senate in conformity with the March 9, 1965, minute order of the United States District Court for the District of Hawaii in *Holt* vs. *Richardson*, et al., Civil No. 2308. This bill, if enacted into law, will be effective for the 1966 general elections and will remain in effect until superseded by a constitutional amendment.

Your Committee upon consideration of this bill has amended Section 1 thereof to read as follows:

"SECTION 1. Article III, Section 2 of the Constitution of the State of Hawaii shall be amended to read as follows:

'Senate; Districts; Composition

Section 2. The Senate shall be composed of twenty-five members, who shall be elected by the qualified

voters of the respective senatorial districts. Until the next reapportionment, the senatorial districts, and the number of senators to be elected from each, shall be as follows:

First senatorial district: the island of Hawaii, three;

Second senatorial district: the islands of Maui, Molokai, Lanai and Kahoolawe, two;

[fol. 541] Third senatorial district: that portion of the island of Oahu consisting of the eighth representative district as described in the Schedule, Article XVI, Section 1, of the Constitution of the State of Hawaii, as amended, three;

Fourth senatorial district: that portion of the island of Oahu consisting of the ninth and tenth representative districts as described in the said Schedule and the first and the eighth precincts of the eleventh representative district as described in the governor's proclamation issued September 11, 1964, for the 1964 general election, four;

Fifth senatorial district: that portion of the island of Oahu consisting of the twelfth and thirteenth representative districts as described in the said Schedule and the second through seventh precincts, inclusive, and the ninth through twelfth precincts, inclusive, of the eleventh representative district, and the first through fifth precincts, inclusive, and the eighth, eleventh, fifteenth and sixteenth precincts of the fourteenth representative district as described in the said proclamation, four;

Sixth senatorial district: that portion of the island of Oahu consisting of the fifteenth representative district as described in the said Schedule and the sixth, seventh, ninth and tenth precincts and the twelfth through fourteenth precincts, inclusive of the fourteenth representative district as described in the said proclamation, four;

Seventh senatorial district: that portion of the island of Oahu consisting of the sixteenth and seventeenth representative districts as described in the said Schedule, four;

Eighth senatorial district: the islands of Kauai and Niihau, one.' "

With respect to other portions of the bill, your Committee feels that no amendments are necessary.

This bill was considered concurrently with H. B. No. 773, S. D. 1 inasmuch as the districting plan intended in H. B. No. 773, S. D. 1, C. D. 1 is intended to be the same as the districting plan set forth in this bill as amended herein. [fol. 542] The findings and conclusions for the districting plan are fully set forth in the Conference Committee Report covering H. B. No. 773, S. D. 1, C. D. 1, and are adopted and incorporated herein by reference.

Your Committee is in accord with the purpose and intent of H. B. No. 987, S. D. 1, as amended herein, and recommends its passage on final reading in the form attached hereto as H. B. No. 987, S. D. 1, C. D. 1.

Respectfully submitted,

MANAGERS ON THE PART OF THE SENATE

/s/ Sakae Takahashi
Sakae Takahashi, Chairman

/s/ O. Vincent Esposito W/R
O. Vincent Esposito, Vice Chrm.

/s/ Yasutaka Fukushima (A/A)
Yasutaka Fukushima, Member

/s/ Mitsuyuki Kido
Mitsuyuki Kido, Member

/s/ Noboru Miyake (WR)
Noboru Miyake, Member

/s/ JOHN T. USHIJIMA
JOHN T. USHIJIMA, Member

/s/ NADAO YOSHINAGA
NADAO YOSHINAGA, Member

MANAGERS ON THE PART OF THE HOUSE

/s/ JAMES H. WAKATSUKI
JAMES H. WAKATSUKI, Chairman

/s/ TADAO BEPPU
TADAO BEPPU, Vice Chrm.

/s/ JAMES K. CLARK
JAMES K. CLARK, Member

/s/ GEORGE W. T. LOO,
GEORGE W. T. LOO, Member

/s/ BARNEY B. MENOR
BARNEY B. MENOR, Member

/s/ KATSUGO MIHO
KATSUGO MIHO, Member

/s/ GEORGE M. OKANO
GEORGE M. OKANO, Member

/s/ ROBERT C. OSHIRO
ROBERT C. OSHIRO, Member

/s/ FREDERICK W. ROHLFING W.R.
FREDERICK W. ROHLFING, Member

/s/ RUDOLPH PACARRO
RUDOLPH PACARRO, Member

[fol. 543]

CONF. COM. REP. NO. 2

Honolulu, Hawaii
April 12, 1965

Re: H. B. No. 987
S. D. 1
C. D. 1

The Honorable Elmer F. Cravalho
Speaker, House of Representatives
Third Legislature
General Session, 1965
State of Hawaii

Sir:

Your Conference Committee to which was referred H. B. No. 987, S. D. 1 entitled: "A BILL FOR AN ACT PROVIDING FOR THE PROVISIONAL REAPPORTIONMENT OF THE SENATE OF THE STATE OF HAWAII", begs leave to report as follows:

The purpose of this bill is to provide for a provisional reapportionment of the State Senate in conformity with the March 9, 1965, minute order of the United States District Court for the District of Hawaii in *Holt* vs. *Richardson,* et al., Civil No. 2308. This bill, if enacted into law, will be effective for the 1966 general elections and will remain in effect until superseded by a constitutional amendment.

Your Committee upon consideration of this bill has amended Section 1 thereof to read as follows:

"SECTION 1. Article III, Section 2 of the Constitution of the State of Hawaii shall be amended to read as follows:

'Senate; Districts; Composition

Section 2. The Senate shall be composed of twenty-five members, who shall be elected by the qualified voters of the respective senatorial districts, and the

number of senators to be elected from each, shall be as follows:

First senatorial district: the island of Hawaii, three;

Second senatorial district: the islands of Maui, Molokai, Lanai and Kahoolawe, two;

[fol. 544] Third senatorial district: that portion of the island of Oahu consisting of the eighth representative district as described in the Schedule, Article XVI, Section 1, of the Constitution of the State of Hawaii, as amended, three;

Fourth senatorial district: that portion of the island of Oahu consisting of the ninth and tenth representative districts as described in the said Schedule and the first and the eighth precincts of the eleventh representative district as described in the governor's proclamation issued September 11, 1964, for the 1964 general election, four;

Fifth senatorial district: that portion of the island of Oahu consisting of the twelfth and thirteenth representative districts as described in the said Schedule and the second through seventh precincts, inclusive, and the ninth through twelfth precincts, inclusive, of the eleventh representative district, and the first through fifth precincts, inclusive, and the eighth, eleventh, fifteenth and sixteenth precincts of the fourteenth representative district as described in the said proclamation, four;

Sixth senatorial district: that portion of the island of Oahu consisting of the fifteenth representative district as described in the said Schedule and the sixth, seventh, ninth and tenth precincts and the twelfth through fourteenth precincts, inclusive of the fourteenth representative district as described in the said proclamation, four;

Seventh senatorial district: that portion of the island of Oahu consisting of the sixteenth and seventeenth

representative districts as described in the said Schedule, four;

Eighth senatorial district: the islands of Kauai and Niihau, one.' "

With respect to other portions of the bill, your Committee feels that no amendments are necessary.

This bill was considered concurrently with H. B. No. 773, S. D. 1 inasmuch as the districting plan intended in H. B. No. 773, S. D. 1, C. D. 1 is intended to be the same as the districting plan set forth in this bill as amended herein. [fol. 545] The findings and conclusions for the districting plan are fully set forth in the Conference Committee Report covering H. B. No. 773, S. D. 1, C. D. 1, and are adopted and incorporated herein by reference.

Your Committee is in accord with the purpose and intent of H. B. No. 987, S. D. 1, as amended herein, and recommends its passage on final reading in the form attached hereto as H. B. No. 987, S. D. 1, C. D. 1.

Respectfully submitted,

MANAGERS ON THE PART OF THE SENATE

/s/ SAKAE TAKAHASHI
SAKAE TAKAHASHI, Chairman

/s/ O. VINCENT ESPOSITO W/R
O. VINCENT ESPOSITO, Vice-Chrm.

/s/ YASUTAKA FUKUSHIMA (W/R)
YASUTAKA FUKUSHIMA, Member

/s/ MITSUYUKI KIDO
MITSUYUKI KIDO, Member

/s/ NOBORU MIYAKE (WR)
NOBORU MIYAKE, Member

/s/ JOHN T. USHIJIMA
JOHN T. USHIJIMA, Member

/s/ NADAO YOSHINAGA
NADAO YOSHINAGA, Member

MANAGERS ON THE PART OF THE HOUSE

/s/ JAMES H. WAKATSUKI
JAMES H. WAKATSUKI, Chairman

/s/ TADAO BEPPU
TADAO BEPPU, Vice-Chrm.

/s/ JAMES K. CLARK
JAMES K. CLARK, Member

/s/ GEORGE W. T. LOO (W.R.)
GEORGE W. T. LOO, Member

/s/ BARNEY B. MENOR
BARNEY B. MENOR, Member

/s/ KATSUGO MIHO
KATSUGO MIHO, Member

/s/ GEORGE M. OKANO
GEORGE M. OKANO, Member

/s/ ROBERT C. OSHIRO
ROBERT C. OSHIRO, Member

/s/ FREDERICK W. ROHLFING W.R.
FREDERICK W. ROHLFING, Member

/s/ RUDOLPH PACARRO
RUDOLPH PACARRO, Member

[fol. 546]

(To be made one and eight copies)

THIRD LEGISLATURE, 1965
STATE OF HAWAII

H.B. NO. 987
S. D. 1
C. D. 1

A BILL FOR AN ACT

PROVIDING FOR THE PROVISIONAL REAPPORTIONMENT OF THE SENATE OF THE STATE OF HAWAII.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. *Senate; Districts; Composition.* The Senate shall be composed of twenty-five members, who shall be elected by the qualified voters of the respective senatorial districts. Until the next reapportionment, the senatorial districts, and the number of senators to be elected from each, shall be as follows:

"Senate; Districts; Composition

Section 2. The Senate shall be composed of twenty-five members, who shall be elected by the qualified voters of the respective senatorial districts. Until the next reapportionment, the senatorial districts, and the number of senators to be elected from each, shall be as follows:

First senatorial district: the island of Hawaii, three;

Second senatorial district: the islands of Maui, Molokai, Lanai and Kahoolawe, two;

Third senatorial district: that portion of the island of Oahu consisting of the eighth representative district

as described in the Schedule, Article XVI, Section 1, of the Constitution of the State of Hawaii, as amended, three;

Fourth senatorial district: that portion of the island [fol. 547] of Oahu consisting of the ninth and tenth representative districts as described in the said Schedule and the first and the eighth precincts of the eleventh representative district as described in the governor's proclamation issued September 11, 1964, for the 1964 general election, four;

Fifth senatorial district: that portion of the island of Oahu consisting of the twelfth and thirteenth representative districts as described in the said Schedule and the second through seventh precincts, inclusive, and the ninth through twelfth precincts, inclusive, of the eleventh representative district, and the first through fifth precincts, inclusive, and the eighth, eleventh, fifteenth and sixteenth precincts of the fourteenth representative district as described in the said proclamation, four;

Sixth senatorial district: that portion of the island of Oahu consisting of the fifteenth representative district as described in the said Schedule and the sixth, seventh, ninth and tenth precincts and the twelfth through fourteenth precincts inclusive, of the fourteenth representative district as described in the said proclamation, four;

Seventh senatorial district: that portion of the island of Oahu consisting of the sixteenth and seven- [fol. 548] teenth representative districts as described in the said Schedule, four;

Eighth senatorial district: the islands of Kauai and Niihau, one."

SECTION 2. On or before June 1, of the year 1975, and of each tenth year thereafter, the governor shall reappor-

tion the members of the senate in the following manner: The total number of senators shall first be reapportioned among four basic areas, namely, (1) the island of Hawaii, (2) the islands of Maui, Molokai, Lanai and Kahoolawe, (3) the island of Oahu and all other islands not specifically enumerated, and (4) the islands of Kauai and Niihau on the basis of the number of voters registered at the last preceding general election in each of such basic areas and computed by the method known as the method of equal proportions, no basic area to receive less than one member. Upon the determination of the total number of senators to which each basic area is entitled, such total shall be reapportioned among the one or more senatorial districts within each basic area on the basis of the number of voters registered at the last preceding general election within each of such senatorial districts and computed by the method known as the method of equal proportions, no senatorial district to receive less than one member. Upon any reapportionment, should the total number of voters registered in any senatorial district be less than one-half of the quotient obtained by dividing the total number of voters registered in the State by the total number of mem- [fol. 549] bers to which the senate is entitled, then, as part of such reapportionment, the basic area within which such senatorial district lies shall be redistricted by the governor in such manner that the total number of voters registered in each new senatorial district therein shall be more than one-half of such quotient, provided, however, that there shall be at least one senatorial district in each basic area.

Upon completion of the reapportionment of the senate as provided herein, the governor shall issue a proclamation showing the results thereof.

Except as otherwise provided hereinafter, the initial reapportionment shall be effective for the election of members to the senate in 1976 and shall remain in effect for succeeding senatorial elections until the next reapportionment takes effect. Except as otherwise provided hereinafter, any subsequent reapportionment shall be effective

for the election of members to the senate in the year next following such reapportionment and shall remain in effect for succeeding senatorial elections until the next reapportionment takes effect.

An incumbent senator whose term of office does not expire until the second general election following the date of the proclamation, including any such senator whose seat has been apportioned to another district by reapportionment, shall be allowed to complete his four-year term; provided that when the seat of such holdover senator has been reapportioned to another district, the election to fill [fol. 550] the new seat in the district to which such seat has been newly apportioned shall not be held until the time of the second election following such proclamation.

Original jurisdiction is hereby vested in the supreme court of the State to be exercised on the application of any registered voter, made within thirty days following the date specified above, to compel, by mandamus or otherwise, the governor to perform the above duty; and made within thirty days following the date of such proclamation, to compel, by mandamus or otherwise, the correction of any error made in such reapportionment.

SECTION 3. The terms of all members of the senate elected or appointed prior to the general election of 1966 shall terminate on the date of the general election of 1966.

Members of the senate elected at the general election of 1966 shall be divided into two classes.

Members of the first class shall hold office for a term of four years beginning with their election and ending on the day of the second general election held thereafter.

Members of the second class shall hold office for a term of two years beginning with their election and ending on the day of the next general election held thereafter.

Upon the expiration of the aforesaid terms of office of members of the respective classes, the term of office of their successors shall be four years.

Of the members to which each senatorial district is [fol. 551] entitled, one-half shall be members of the second class. If the total number of senators to which a senatorial district is entitled is not an even number, the number of members of the first class in such district shall be the quotient of said total number divided by two, rounded off to the next whole number. The remainder shall be members of the second class. Membership in the first and second classes shall be determined by the number of votes cast for each senator in such district. The first class shall consist of those senators, in number corresponding with the number of members of the first class to which such district is entitled, who are elected with the highest number of votes from such district. The remaining senators elected shall constitute the second class.

The senator from a senatorial district that is entitled to one senator shall automatically be a member of the first class.

SECTION 4. This Act shall take effect upon approval by the Governor of the State of Hawaii and by the United States District Court for the District of Hawaii and shall remain in effect until superseded by constitutional amendment; provided that the regular election of 1966, shall be the first election held pursuant to the provisions herein.

[fol. 552]

H. B. 987

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Honolulu, Hawaii
April 14, 1965

We hereby certify that the foregoing Bill passed Final Reading in the House of Representatives of the Third Legislature of the State of Hawaii on April 14, 1965, by not less than two-thirds vote of all the members to which the House is entitled.

/s/ Elmer F. Cravalho
Elmer F. Cravalho
Speaker, House of Representatives

/s/ Shigeto Kanemoto
Shigeto Kanemoto
Clerk, House of Representatives

THE SENATE OF THE STATE OF HAWAII

Honolulu, Hawaii
April 14, 1965

We hereby certify that the foregoing Bill passed Final Reading in the Senate of the Third Legislature of the State of Hawaii on April 14, 1965.

/s/ Kazuhisa Abe
Kazuhisa Abe
President of the Senate

/s/ Seichi Hirai
Seichi Hirai
Clerk of the Senate

[fol. 553]

EXHIBIT "B"

CONF. COM. REP. NO. 1

Honolulu, Hawaii
April 13, 1965

Re: H. B. No. 773
S. D. 1

The Honorable Kazuhisa Abe
President of the Senate
Third Legislature
General Session, 1965
State of Hawaii

Sir:

Your Committee on Conference to which was referred H. B. No. 773, S. D. 1, entitled: "A BILL FOR AN ACT PROPOSING AMENDMENTS TO THE CONSTITUTION OF THE STATE OF HAWAII, RELATING TO THE COMPOSITION, DISTRICTING, REDISTRICTING, APPORTIONMENT, REAPPORTIONMENT, AND CONSTITUTIONAL AMENDMENT PROVISIONS AFFECTING THE STATE SENATE", begs leave to report as follows:

The purpose of this bill is to propose amendments to the Constitution of the State of Hawaii for the reapportionment of the State Senate to comport with the equal protection clause of the Fourteenth Amendment of the Constitution of the United States in conformity with the March 9, 1965 minute order of the United States District Court for the District of Hawaii in *Holt* v. *Richardson*, et al., Civil No. 2308.

Your Committee, upon consideration of the bill with particular attention focused on the re-establishment of senatorial districts, has amended Section 1 thereof to read as follows:

"SECTION 1. Article III, Section 2 of the Constitution of the State of Hawaii shall be amended to read as follows:

'Senate; Districts; Composition

Section 2. The Senate shall be composed of twenty-five members, who shall be elected by the qualified voters of the respective senatorial districts. Until the next reapportionment, the senatorial districts, and the number of senators to be elected from each, shall be as follows:

First senatorial district: the island of Hawaii, three;

[fol. 554] Second senatorial district: the islands of Maui, Molokai, Lanai and Kahoolawe, two;

Third senatorial district: that portion of the island of Oahu consisting of the eighth representative district as described in the Schedule, Article XVI, Section 1, of the Constitution of the State of Hawaii, as amended, three;

Fourth senatorial district: that portion of the island of Oahu consisting of the ninth and tenth representative districts as described in the said Schedule and the first and the eighth precincts of the eleventh representative district as described in the governor's proclamation issued September 11, 1964, for the 1964 general election, four;

Fifth senatorial district: that portion of the island of Oahu consisting of the twelfth and thirteenth representative districts as described in the said Schedule and the second through seventh precincts, inclusive, and the ninth through twelfth precincts, inclusive of the eleventh representative district, and the first through fifth precincts, inclusive, and the eighth, eleventh, fifteenth and sixteenth precincts of the fourteenth

representative district as described in the said proclamation, four;

Sixth senatorial district: that portion of the island of Oahu consisting of the fifteenth representative district as described in the said Schedule and the sixth, seventh, ninth and tenth precincts and the twelfth through fourteenth precincts, inclusive, of the fourteenth representative district as described in the said proclamation, four;

Seventh senatorial district: that portion of the island of Oahu consisting of the sixteenth and seventeenth representative districts as described in the said Schedule, four;

Eighth senatorial district: the islands of Kauai and Niihau, one.' "

With the consolidation of the two senatorial districts in Hawaii into one district, each of the counties of Hawaii, Maui, and Kauai shall be one senatorial district. Oahu, with five senatorial districts, is the only county with more than one district. Based on the number of voters registered in the 1964 general election, the senatorial districts in Oahu as above set forth shall contain registered voters as follows:

[fol. 555]

Third senatorial district:		
8th District	27,073	27,073
Fourth senatorial district:		
9th District	8,934	
10th	23,859	
1/11th	1,410	
8/11th	1,577	35,780

Fifth senatorial district:

2/11th	District	1,402	
3/11th		1,101	
4/11th		1,094	
5/11th		830	
6/11th		1,398	
7/11th		1,629	
9/11th		1,169	
10/11th		1,111	
11/11th		1,512	
12	th	915	
	th	11,500	
13th		6,456	
1/14th		2,150	
2/14th		773	
3/14th		819	
4/14th		674	
5/14th		755	
8/14th		948	
11/14th		832	
15/14th		1,334	
16/14th		959	39,361

Sixth senatorial district:

6/14th	District	1,010	
7/14th		983	
9/14th		1,997	
10/14th		1,662	
12/14th		391	
13/14th		1,679	
14/14th		1,605	
15th		31,302	40,629

Seventh senatorial district:

16th	District	18,201	
17th		19,135	37,336

[fol. 556] With respect to other portions of the bill, your Committee feels that no amendments are necessary.

Initially, your Committee was faced with the question as to whether or not its district structuring should adhere as much as possible to single-member districts as opposed to multi-member districts. It has been argued that small, single-member districts may offer an advantage by providing a close relationship between voter and legislator and that it may provide a chance for the voters to become better informed, based on this close relationship. On the other hand, your Committee is deeply concerned that these single-member districts, representing only a very small portion of the State, may tend to be primarily concerned with localized issues and ignore the broader issues facing the State. It may fragment the approach to statewide problems and programs, including economic development and capital improvement programs, to the detriment of the State as a whole.

Hawaii traditionally has had, as a territory and a state, a House of Representatives and a Senate, with a member of the House having a shorter term, representing a smaller constituency and being of a numerically larger body, than a member of the Senate. This experience has proved meaningful in achieving the concept of bicameralism initially sought by the constitutional convention. Simply because it is now declared that the controlling criterion of substantial equality of population for apportioning representation is required to be the same in both houses, your Committee does not believe it necessary to abandon the scheme of a member of the House having a shorter term and representing a smaller constituency than a member of the Senate so long as substantial equality of population among the various districts is achieved. To provide for a single-

member senatorial district may have undesirable effect on the complexion of the two houses in that a senatorial district may, contrary to tradition and experience proved to be desirable, be smaller than a representative district so that a senator will represent a smaller constituency but have a longer term than a member of the House. Accordingly, the senatorial districting as recommended herein provides for senatorial districts that are larger than the representative districts except in the case of the third senatorial district.

Your Committee believes that multi-member districts will provide a better opportunity for increasing the significance of an individual's vote by focusing the individual's attention on a broad spectrum of major community problems as opposed to those of more limited and local concerns.

[fol. 557] On the other hand, if the multi-member district has too large a number of senators or too large a number of vacancies to be filled in the same election, then intelligent voter selection may become quite difficult and the two party system may be weakened. Accordingly, your Committee recommends the division of the existing 4th and 5th senatorial districts on the island of Oahu into five districts which provide an allocation of four senators each to four districts and three senators to the remaining district.

Small single-member districts would further compound the technical and intricate problem of drawing the boundaries of such districts. As the Supreme Court of the United States noted, "Indiscriminate districting, without any regard for political subdivision or natural or historical boundary lines, may be little more than an open invitation to partisan gerrymandering." (*Reynolds* v. *Sims*) Furthermore, your Committee believes that population shifts will more drastically affect the boundaries of many, small single-

member districts than would be true of larger multi-member districts. This means that if small, single-member districts are employed, more frequent reapportionments and readjustments of district boundaries would be required. This concern is particularly significant on Oahu which has experienced a population boom and the massive and rapid development of residential subdivisions to accommodate the increased and mobile population.

Your Committee feels that nine and ten senators from the 4th and 5th senatorial districts respectively, calls for too large an apportionment of senators for the districts concerned. Further, your Committee disapproved the proposal for the creation of nineteen small single-member districts on Oahu for the reasons above stated. Your Committee finds that the division of Oahu into five senatorial districts is reasonable and justifiable.

After determining that reasonably apportioned multi-member districts are justifiable, your Committee then was faced with the task of drawing district boundaries. The solution to this problem required the selection of certain values or characteristics desired in the constituency in addition to registered voter population. The district boundaries as recommended by your Committee basically sets out the boundaries along geographical lines and density of population.

The senatorial districting adheres to the division of the basic areas with respect to the counties of Hawaii, Maui and Kauai. While a remapping of the senatorial districts was necessary for Oahu (a basic area), the districting [fol. 558] plan for the Senate accomplishes the intended apportionment that will assure some voice to the counties as political subdivisions. The recognition of the basic areas in the districting scheme appears to your Committee as a logi-

cal approach since they are and historically have been administered as separate counties and are physically insulated from each other. Additionally, Oahu has been an urban and industrial community while the other areas have remained essentially rural and primarily concerned with agriculture and ranching.

In drawing the district lines as proposed herein, your Committee relied very heavily on the standards of compactness and contiguity. In the districting plan for Oahu, the Koolau Mountain Range is taken as a central and key terrain feature. The windward side of Oahu from Waimanalo through Sunset Beach, primarily a suburban residential area, is proposed as the 3rd senatorial district entitled to three senators. Although it coincides with the boundaries of the eighth representative district, your Committee believes this is justified due to its well-defined geographical separation by the Koolau Range. The leeward side including the Waialua, Wahiawa, Waipahu, Waianae and Aiea plantation and suburban communities makes for a logical consolidation into the 4th senatorial district. The adding of the 1st and 8th precincts of the 11th representative district which include Moanalua, Salt Lake, and Naval Housing area appears to be valid and logical additions to the proposed 4th senatorial district. The remaining senatorial districts on Oahu, to-wit: 5th, 6th, 7th, are bounded by lines running from the Koolau Range to the ocean along well-defined and long established representative district and precinct lines. In the apportionment scheme as proposed, your Committee has in good faith attempted to apportion one senator to every 9,500 registered voters. The greatest disparity appears in the comparison of the 4th senatorial district with 35,780 registered voters and the 6th senatorial district with 40,629 registered voters. Your Committee, although mindful of its duty to construct districts as nearly of equal population as is practicable, found it a practical impossiblity to achieve mathematical exactness with respect to the 4th senatorial district. Dis-

stricting that would provide a larger registered voter population in the 4th senatorial district would have meant the splitting of the heart of the Kalihi community and adding a portion thereof to the leeward Oahu communities which are geographically removed from and foreign to Kalihi. Your Committee believes that the standards of compactness and contiguity and the considerations of areas of population concentration and established and recognized communities should be respected over quantitative precision in this instance if the districting is to be in any way meaningful, and further believes that by these considera- [fol. 559] tions, the disparity is not egregious and the plan proposed herein comports with the equal population principle as required by the equal protection clause.

Your Committee's recommendation for the consolidation of the first and second senatorial districts into the first senatorial district on the island of Hawaii was prompted in large part to equalize the registered voter population of that island with the districts on Oahu to the extent possible. The islands of Maui and Kauai have been kept as two-member and single-member senatorial districts respectively, in view of their establishment as basic areas in the determination of the apportionment scheme for the legislature.

Before deciding upon the final districting plan for the senate, your Committee gave serious consideration to alternative plans involving two-member and three-member senatorial districts for Oahu. Your Committee's rejection of two-member districts was based on objections enumerated herein against single-member districts. A plan calling for three-member districts on Oahu would mean dividing the island into seven districts. As a practical matter, many of these seven districts would closely approach the population and geographical sizes of the ten existing representative districts. Your Committee is of the opinion that a senate districting plan based on three-member districts

would dissipate one of the real basis for bicameralism in our State Legislature.

In the light of the considerations above set forth, your Committee believes that senatorial districts, as set forth in this bill, have been constructed so as to achieve districts as nearly of equal population as is practicable and to provide for fair and effective representation of all citizens.

Your Committee is in accord with the purpose and intent of H. B. No. 773, S. D. 1, as amended herein, and recommends its passage on final reading in the form attached hereto as H. B. No. 773, S. D. 1, C. D. 1.

[fol. 560] Respectfully submitted,

MANAGERS ON THE PART OF THE SENATE

/s/ Sakae Takahashi
Sakae Takahashi, Chairman

/s/ O. Vincent Esposito W/R
O. Vincent Esposito, Vice Chairman

/s/ Yasutaka Fukushima (W/R)
Yasutaka Fukushima, Member

/s/ Mitsuyuki Kido
Mitsuyuki Kido, Member

/s/ Noboru Miyake (WR)
Noboru Miyake, Member

/s/ John T. Ushijima
John T. Ushijima, Member

/s/ Nadao Yoshinaga
Nadao Yoshinaga, Member

MANAGERS ON THE PART OF THE HOUSE

/s/ James H. Wakatsuki
James H. Wakatsuki, Chairman

/s/ Tadao Beppu
Tadao Beppu, Vice Chairman

/s/ James K. Clark
James K. Clark, Member

/s/ George W. T. Loo
George W. T. Loo, Member

/s/ Barney B. Menor
Barney B. Menor, Member

/s/ Katsugo Miho
Katsugo Miho, Member

/s/ George M. Okano
George M. Okano, Member

/s/ Robert C. Oshiro
Robert C. Oshiro, Member

/s/ Frederick W. Rohlfing W.R.
Frederick W. Rohlfing, Member

/s/ Rudolph Pacarro
Rudolph Pacarro, Member

[fol. 561]

CONF. COM. REP. NO. 1

Honolulu, Hawaii
April 12, 1965

Re: H. B. No. 773
S. D. 1
C. D. 1

The Honorable Elmer F. Cravalho
Speaker, House of Representatives
Third Legislature
General Session, 1965
State of Hawaii

Sir:

Your Committee on Conference to which was referred H. B. No. 773, S. D. 1, entitled: "A BILL FOR AN ACT PROPOSING AMENDMENTS TO THE CONSTITUTION OF THE STATE OF HAWAII, RELATING TO THE COMPOSITION, DISTRICTING, REDISTRICTING, APPORTIONMENT, REAPPORTIONMENT, AND CONSTITUTIONAL AMENDMENT PROVISIONS AFFECTING THE STATE SENATE," begs leave to report as follows:

The purpose of this bill is to propose amendments to the Constitution of the State of Hawaii for the reapportionment of the State Senate to comport with equal protection clause of the Fourteenth Amendment of the Constitution of the United States in conformity with the March 9, 1965 minute order of the United States District Court for the District of Hawaii in *Holt* v. *Richardson,* et al, Civil No. 2308.

Your Committee, upon consideration of the bill with particular attention focused on the re-establishment of senatorial districts, has amended Section 1 thereof to read as follows:

"SECTION 1. Article III, Section 2 of the Constitution of the State of Hawaii shall be amended to read as follows:

'Senate; Districts; Composition

Section 2. The Senate shall be composed of twenty-five members, who shall be elected by the qualified voters of the respective senatorial districts. Until the next reapportionment, the senatorial districts, and the number of senators to be elected from each, shall be as follows:

First senatorial district: the island of Hawaii, three;

[fol. 562] Second senatorial district: the islands of Maui, Molokai, Lanai and Kahoolawe, two;

Third senatorial district: that portion of the island of Oahu consisting of the eighth representative district as described in the Schedule, Article XVI, Section 1, of the Constitution of the State of Hawaii, as amended, three;

Fourth senatorial district: that portion of the island of Oahu consisting of the ninth and tenth representative districts as described in the said Schedule and the first and the eighth precincts of the eleventh representative district as described in the governor's proclamation issued September 11, 1964, for the 1964 general election, four;

Fifth senatorial district: that portion of the island of Oahu consisting of the twelfth and thirteenth representative districts as described in the said Schedule and the second through seventh precincts, inclusive, and the ninth through twelfth precincts, inclusive of the eleventh representative district, and the first through fifth precincts, inclusive, and the eighth, eleventh, fifteenth and sixteenth precincts of the fourteenth representative district as described in the said proclamation, four;

Sixth senatorial district: that portion of the island of Oahu consisting of the fifteenth representative district as described in the said Schedule and the sixth, seventh, ninth and tenth precincts and the twelfth through fourteenth precincts, inclusive, of the fourteenth representative district as described in the said proclamation, four;

Seventh senatorial district: that portion of the island of Oahu consisting of the sixteenth and seventeenth representative districts as described in the said Schedule, four;

Eighth senatorial district: the islands of Kauai and Niihau, one.'"

With the consolidation of the two senatorial districts in Hawaii into one district, each of the counties of Hawaii, Maui, and Kauai shall be one senatorial district. Oahu, with five senatorial districts, is the only county with more than one district. Based on the number of voters registered in the 1964 general election, the senatorial districts in Oahu as above set forth shall contain registered voters as follows:

[fol. 563]

Third senatorial district:

8th District	27,073	27,073

Fourth senatorial district:

9th District	8,934	
10th	23,859	
1/11th	1,410	
8/11th	1,577	35,780

Fifth senatorial district:

2/11th District	1,402	
3/11th	1,101	
4/11th	1,094	
5/11th	830	
6/11th	1,398	
7/11th	1,629	
9/11th	1,169	
10/11th	1,111	
11/11th	1,512	
12/11th	915	
12th	11,500	
13th	6,456	
1/14th	2,150	
2/14th	773	
3/14th	819	
4/14th	674	
5/14th	755	
8/14th	948	
11/14th	832	
15/14th	1,334	
16/14th	959	39,361

Sixth senatorial district:

6/14th District	1,010	
7/14th	983	
9/14th	1,997	
10/14th	1,662	
12/14th	391	
13/14th	1,679	
14/14th	1,605	
15th	31,302	40,629

Seventh senatorial district:

16th District	18,201	
17th	19,135	37,336

[fol. 564] With respect to other portions of the bill, your Committee feels that no amendments are necessary.

Initially, your Committee was faced with the question as to whether or not its district structuring should adhere as much as possible to single-member districts as opposed to multi-member districts. It has been argued that small, single-member districts may offer an advantage by providing a close relationship between voter and legislator and that it may provide a chance for the voters to become better informed, based on this close relationship. On the other hand, your Committee is deeply concerned that these single-member districts, representing only a very small portion of the State, may tend to be primarily concerned with localized issues and ignore the broader issues facing the State. It may fragment the approach to statewide problems and programs, including economic development and capital improvement programs, to the detriment of the State as a whole.

Hawaii traditionally has had, as a territory and a state, a House of Representatives and a Senate, with a member of the House having a shorter term, representing a smaller constituency and being of a numerically larger body, than a member of the Senate. This experience has proved meaningful in achieving the concept of bicameralism initially sought by the constitutional convention. Simply because it is now declared that the controlling criterion of substantial equality of population for apportioning representation is required to be the same in both houses, your Committee does not believe it necessary to abandon the scheme of a member of the House having a shorter term and representing a smaller constituency than a member of the Senate so long as substantial equality of population among the various districts is achieved. To provide for a single-member senatorial district may have undesirable effect on the complexion of the two houses in that a senatorial district may, contrary to tradition and experience proved to be desirable, be smaller than a representative district so that a senator will represent a smaller constituency but have a

longer term than a member of the House. Accordingly, the senatorial districting as recommended herein provides for senatorial districts that are larger than the representative districts except in the case of the third senatorial district.

Your Committee believes that multi-member districts will provide a better opportunity for increasing the significance of an individual's vote by focusing the individual's attention on a broad spectrum of major community problems as opposed to those of more limited and local concerns. On the other hand, if the multi-member district has too [fol. 565] large a number of senators or too large a number of vacancies to be filled in the same election, then intelligent voter selection may become quite difficult and the two party system may be weakened. Accordingly, your Committee recommends the division of the existing 4th and 5th senatorial districts on the island of Oahu into five districts which provide an allocation of four senators each to four districts and three senators to the remaining district.

Small single-member districts would further compound the technical and intricate problem of drawing the boundaries of such districts. As the Supreme Court of the United States noted, "Indiscriminate districting, without any regard for political subdivision or natural or historical boundary lines, may be little more than an open invitation to partisan gerrymandering." (*Reynolds* v. *Sims*) Furthermore, your Committee believes that population shifts will more drastically affect the boundaries of many, small single-member districts than would be true of larger multi-member districts. This means that if small, single-member districts are employed, more frequent reapportionments and readjustments of district boundaries would be required. This concern is particularly significant on Oahu which has experienced a population boom and the massive and rapid development of residential subdivisions to accommodate the increased and mobile population.

Your Committee feels that nine and ten senators from the 4th and 5th senatorial districts respectively, calls for

too large an apportionment of senators for the districts concerned. Further, your Committee disapproved the proposal for the creation of nineteen small single-member districts on Oahu for the reasons above stated. Your Committee finds that the division of Oahu into five senatorial districts is reasonable and justifiable.

After determining that reasonably apportioned multi-member districts are justifiable, your Committee then was faced with the task of drawing district boundaries. The solution to this problem required the selection of certain values or characteristics desired in the constituency in addition to registered voter population. The district boundaries as recommended by your Committee basically sets out the boundaries along geographical lines and density of population.

The senatorial districting adheres to the division of the basic areas with respect to the counties of Hawaii, Maui and Kauai. While a remapping of the senatorial districts was necessary for Oahu (a basic area), the districting plan [fol. 566] for the Senate accomplishes the intended apportionment that will assure some voice to the counties as political subdivisions. The recognition of the basic areas in the districting scheme appears to your Committee as a logical approach since they are and historically have been administered as separate counties and are physically insulated from each other. Additionally, Oahu has been an urban and industrial community while the other areas have remained essentially rural and primarily concerned with agriculture and ranching.

In drawing the district lines as proposed herein, your Committee relied very heavily on the standards of compactness and contiguity. In the districting plan for Oahu, the Koolau Mountain Range is taken as a central and key terrain feature. The windward side of Oahu from Waimanalo through Sunset Beach, primarily a suburban residential area, is proposed as the 3rd senatorial district entitled to three senators. Although it coincides with the boundaries of the eighth representative district, your Com-

mittee believes this is justified due to its well-defined geographical separation by the Koolau Range. The leeward side including the Waialua, Wahiawa, Waipahu, Waianae and Aiea plantation and suburban communities makes for a logical consolidation into the 4th senatorial district. The adding of the 1st and 8th precincts of the 11th representative district which include Moanalua, Salt Lake, and Naval Housing area appears to be valid and logical additions to the proposed 4th senatorial district. The remaining senatorial districts on Oahu, to-wit: 5th, 6th, 7th, are bounded by lines running from the Koolau Range to the ocean along well-defined and long established representative district and precinct lines. In the apportionment scheme as proposed, your Committee has in good faith attempted to apportion one senator to every 9,500 registered voters. The greatest disparity appears in the comparison of the 4th senatorial district with 35,780 registered voters and the 6th senatorial district with 40,629 registered voters. Your Committee, although mindful of its duty to construct districts as nearly of equal population as is practicable, found it a practical impossibility to achieve mathematical exactness with respect to the 4th senatorial district. Districting that would provide a larger registered voter population in the 4th senatorial district would have meant the splitting of the heart of the Kalihi community and adding a portion thereof to the leeward Oahu communities which are geographically removed from and foreign to Kalihi. Your Committee believes that the standards of compactness and contiguity and the considerations of areas of population concentration and established and recognized communities should be respected over quantitative precision in this instance if the districting is to be in any way meaningful, and further believes that by these considerations, [fol. 567] the disparity is not egregious and the plan proposed herein comports with the equal population principle as required by the equal protection clause.

Your Committee's recommendation for the consolidation of the first and second senatorial districts into the first senatorial district on the island of Hawaii was prompted

in large part to equalize the registered voter population of that island with the districts on Oahu to the extent possible. The islands of Maui and Kauai have been kept as two-member and single-member senatorial districts respectively, in view of their establishment as basic areas in the determination of the apportionment scheme for the legislature.

Before deciding upon the final districting plan for the senate, your Committee gave serious consideration to alternative plans involving two-member and three-member senatorial districts for Oahu. Your Committee's rejection of two-member districts was based on objections enumerated herein against single-member districts. A plan calling for three-member districts on Oahu would mean dividing the island into seven districts. As a practical matter, many of these seven districts would closely approach the population and geographical sizes of the ten existing representative districts. Your Committee is of the opinion that a senate districting plan based on three-member districts would dissipate one of the real basis for bicameralism in our State Legislature.

In the light of the considerations above set forth, your Committee believes that senatorial districts, as set forth in this bill, have been constructed so as to achieve districts as nearly of equal population as is practicable and to provide for fair and effective representation of all citizens.

Your Committee is in accord with the purpose and intent of H. B. No. 773, S. D. 1, as amended herein, and recommends its passage on final reading in the form attached hereto as H. B. No. 773, S. D. 1, C. D. 1.

[fol. 568] Respectfully submitted,

MANAGERS ON THE PART OF THE SENATE

/s/ Sakae Takahashi
Sakae Takahashi, Chairman

/s/ O. Vincent Esposito W/R
O. Vincent Esposito, Vice Chrm.

/s/ YASUTAKA FUKUSHIMA (W/R)
Yasutaka Fukushima, Member

/s/ MITSUYUKI KIDO
Mitsuyuki Kido, Member

/s/ N. MIYAKE (WR)
Noboru Miyake, Member

/s/ JOHN T. USHIJIMA
John T. Ushijima, Member

/s/ NADAO YOSHINAGA
Nadao Yoshinaga, Member

MANAGERS ON THE PART OF THE HOUSE

/s/ JAMES H. WAKATSUKI
James H. Wakatsuki, Chairman

/s/ TADAO BEPPU
Tadao Beppu, Vice Chrm.

/s/ JAMES K. CLARK
James K. Clark, Member

/s/ GEORGE W. T. LOO (W.R.)
George W. T. Loo, Member

/s/ BARNEY B. MENOR
Barney B. Menor, Member

/s/ KATSUGO MIHO
Katsugo Miho, Member

/s/ GEORGE M. OKANO
George M. Okano, Member

/s/ ROBERT C. OSHIRO
Robert C. Oshiro, Member

/s/ FREDERICK W. ROHLFING W.R.
Frederick W. Rohlfing, Member

/s/ RUDOLPH PACARRO
Rudolph Pacarro, Member

[fol. 569]
(To be made one and eight copies)

THIRD LEGISLATURE, 1965
STATE OF HAWAII

H.B. No. 773
S. D. 1
C. D. 1

A BILL FOR AN ACT

PROPOSING AMENDMENTS TO THE CONSTITUTION OF THE STATE OF HAWAII, RELATING TO THE COMPOSITION, DISTRICTING, REDISTRICTING, APPORTIONMENT, REAPPORTIONMENT, AND CONSTITUTIONAL AMENDMENT PROVISIONS AFFECTING THE STATE SENATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Article III, Section 2 of the Constitution of the State of Hawaii shall be amended to read as follows:

"*Senate; Districts; Composition*

Section 2. The Senate shall be composed of twenty-five members, who shall be elected by the qualified voters of the respective senatorial districts. Until the next reapportionment, the senatorial districts, and the number of senators to be elected from each, shall be as follows:

First senatorial district: the island of Hawaii, three;

Second senatorial district: the islands of Maui, Molokai, Lanai and Kahoolāwe, two;

Third senatorial district: that portion of the island of Oahu consisting of the eighth representative district as described in the Schedule, Article XVI, Section 1, of the Constitution of the State of Hawaii, as amended, three;

Fourth senatorial district: that portion of the island of Oahu consisting of the ninth and tenth representative districts as described in the said Schedule and the

[fol. 570] first and the eighth precincts of the eleventh representative district as described in the governor's proclamation issued September 11, 1964, for the 1964 general election, four;

Fifth senatorial district: that portion of the island of Oahu consisting of the twelfth and thirteenth representative districts as described in the said Schedule and the second through seventh precincts, inclusive, and the ninth through twelfth precincts, inclusive, of the eleventh representative district, and the first through fifth precincts, inclusive, and the eighth, eleventh, fifteenth and sixteenth precincts of the fourteenth representative district as described in the said proclamation, four;

Sixth senatorial district: that portion of the island of Oahu consisting of the fifteenth representative district as described in the said Schedule and the sixth, seventh, ninth and tenth precincts and the twelfth through fourteenth precincts, inclusive, of the fourteenth representative district as described in the said proclamation, four;

Seventh senatorial district: that portion of the island of Oahu consisting of the sixteenth and seventeenth representative districts as described in the said Schedule, four;

Eighth senatorial district: the islands of Kauai and Niihau, one."

SECTION 2. Article III of the Constitution of the State of Hawaii shall be amended by adding thereto a new section, [fol. 571] to be designated "Section 2.1" next following Section 2 thereof, to read as follows:

"Reapportionment of Senate

Section 2.1. On or before June 1 of the year 1975, and of each tenth year thereafter, the governor shall

reapportion the members of the senate in the following manner: the total number of senators shall first be reapportioned among four basic areas, namely, (1) the island of Hawaii, (2) the islands of Maui, Molokai, Lanai and Kahoolawe, (3) the island of Oahu and all other islands not specifically enumerated, and (4) the islands of Kauai and Niihau, on the basis of the number of voters registered at the last preceding general election in each of such basic areas and computed by the method known as the method of equal proportions, no basic area to receive less than one member. Upon the determination of the total number of senators to which each basic area is entitled, such total shall be reapportioned among the one or more senatorial districts within each basic area on the basis of the number of voters registered at the last preceding general election within each of such senatorial districts and computed by the method known as the method of equal proportions, no senatorial district to receive less than one member. Upon any reapportionment, should the total number of voters registered in any senatorial district be less than one-half of the quotient obtained by dividing the total number of voters registered in [fol. 572] the State by the total number of members to which the senate is entitled, then, as part of such reapportionment, the basic area within which such senatorial district lies shall be redistricted by the governor in such manner that the total number of voters registered in each new senatorial district therein shall be more than one-half of such quotient, provided, however, that there shall be at least one senatorial district in each basic area.

Upon completion of the reapportionment of the senate as provided herein, the governor shall issue a proclamation showing the results thereof.

Except as otherwise provided hereinafter, the initial reapportionment shall be effective for the election of

members to the senate in 1976 and shall remain in effect for succeeding senatorial elections until the next reapportionment takes effect. Except as otherwise provided hereinafter, any subsequent reapportionment shall be effective for the election of members to the senate in the year next following such reapportionment and shall remain in effect for succeeding senatorial elections until the next reapportionment takes effect.

An incumbent senator whose term of office does not expire until the second general election following the date of the proclamation, including any such senator whose seat has been apportioned to another district by reapportionment, shall be allowed to complete his [fol. 573] four-year term; provided that when the seat of such holdover senator has been reapportioned to another district, the election to fill the new seat in the district to which such seat has been newly apportioned shall not be held until the time of the second election following such proclamation.

Original jurisdiction is hereby vested in the supreme court of the State to be exercised on the application of any registered voter, made within thirty days following the date specified above, to compel, by mandamus or otherwise, the governor to perform the above duty and made within thirty days following the date of such proclamation, to compel, by mandamus or otherwise, the correction of any error made in such reapportionment."

SECTION 3. Article III, Section 5, of the Constitution of the State of Hawaii shall be amended by substituting a semicolon for the period at the end of the second sentence thereof and adding the following thereafter:

"provided that members of the senate elected at the general election of 1966 shall be divided into two classes. Members of the first class shall hold office for a term of four years beginning with their election and

ending on the day of the second general election held thereafter. Members of the second class shall hold office for a term of two years beginning with their election and ending on the day of the next general [fol. 574] election held thereafter. Upon the expiration of the aforesaid terms of office of members of the respective classes, the term of office of their successors shall be four years. Of the members to which each senatorial district is entitled, one-half shall be members of the second class. If the total number of senators to which a senatorial district is entitled is not an even number, the number of members of the first class in such district shall be the quotient of said total number divided by two, rounded off to the next whole number. The remainder shall be members of the second class. Membership in the first and second classes shall be determined by the number of votes cast for each senator in such district. The first class shall consist of those senators, in number corresponding with the number of members of the first class to which such district is entitled, who are elected with the highest number of votes from such district. The remaining senators elected shall constitute the second class. The senator from a senatorial district that is entitled to one senator shall automatically be a member of the first class."

SECTION 4. Article XV, Section 2, of the Constitution of the State of Hawaii shall be amended by substituting a period for the semicolon in the sixth paragraph thereof and by deleting from the sixth paragraph the proviso at the end of said paragraph, which reads:

[fol. 575] "provided, that no constitutional amendment altering this proviso or the representation from any senatorial district in the senate shall become effective unless it shall also be approved by a majority of the votes tallied upon the question in each of a majority of the counties."

SECTION 5. The foregoing amendments shall take effect upon compliance with the provisions of Article XV, Section 3, of the Constitution of the State of Hawaii; provided that the proviso now in Article XV, Section 2, paragraph 6, shall not be applicable.

[fol. 576] H. B. No. 773

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Honolulu, Hawaii
April 14, 1965

We hereby certify that the foregoing Bill passed Final Reading in the House of Representatives of the Third Legislature of the State of Hawaii on April 14, 1965, by not less than two-thirds vote of all the members to which the House is entitled.

/s/ Elmer F. Cravalho
Elmer F. Cravalho
Speaker, House of Representatives

/s/ Shigeto Kanemoto
Shigeto Kanemoto
Clerk, House of Representatives

THE SENATE OF THE STATE OF HAWAII

Honolulu, Hawaii
April 14, 1965

We hereby certify that the foregoing Bill passed Final Reading in the Senate of the Third Legislature of the State of Hawaii on April 14, 1965.

/s/ Kazuhisa Abe
Kazuhisa Abe
President of the Senate

/s/ Seichi Hirai
Seichi Hirai
Clerk of the Senate

[fol. 577]

EXHIBIT "C"

(See opposite) ☞

THIRD LEGISLATURE, 1965
STATE OF HAWAII

H.B. NO. 986

A BILL FOR AN ACT

RELATING TO A CONSTITUTIONAL CONVENTION

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Purpose. Article XV, section 2, of the Constitution of the State of Hawaii provides that the legislature may submit to the electorate at any general or special election the question, "Shall there be a convention to propose a revision of or amendments to the constitution?" It is the purpose of this Act to provide for the submission of such question at the general election of 1966 in conformity with the March 9, 1965 minute order of the United States District Court for the District of Hawaii in Civil No. 2308.

SECTION 2. Submission of question. The legislature hereby submits the question, "Shall there be a convention to propose a revision of or amendments to the constitution?" to the electorate, which question shall be voted on at the general election of 1966.

SECTION 3. This Act shall take effect upon its approval.

INTRODUCED BY:

[fol. 577]

EXHIBIT "C"

147

[fol. 578]

[fol. 579] H. B. No. 986

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Honolulu, Hawaii
April 14, 1965

We hereby certify that the foregoing Bill passed Third Reading in the House of Representatives of the Third Legislature of the State of Hawaii on March 16, 1965.

/s/ Elmer F. Cravalho
Elmer F. Cravalho
Speaker, House of Representatives

/s/ Shigeto Kanemoto
Shigeto Kanemoto
Clerk, House of Representatives

THE SENATE OF THE STATE OF HAWAII

Honolulu, Hawaii
April 14, 1965

We hereby certify that the foregoing Bill passed Third Reading in the Senate of the Third Legislature of the State of Hawaii on March 18, 1965.

/s/ Kazuhisa Abe
Kazuhisa Abe
President of the Senate

/s/ Seichi Hirai
Seichi Hirai
Clerk of the Senate

[fol. 580]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

Civil No. 2308

[Title omitted]

ORDER STAYING INJUNCTION—April 19, 1965

This court feeling that good cause exists for the same:

It Is Ordered that the injunctive restraint imposed by those portions only of the "Decision and Order" of this court of February 17, 1965, as well as the "Final Order on Motion to Alter or Amend Judgment" of March 19, 1965, enjoining the legislators and parties to this action from taking final action on any legislation (subject to certain exceptions set forth therein) until the State Legislature in regular session in 1965 should have enacted and adopted the reapportionment legislation specified in the above "Decision" and "Final Order" is hereby stayed until such time as this court shall have filed its Decision and Order upon H. B. 987, S. D. 1, Conf. D. 1, and other proposed legislation submitted and filed in this court by Intervenors-Defendants Nelson K. Doi, et al., and Elmer F. Cravalho, et al., on April 14, 1965, or until further order of this court.

It Is Further Ordered that this stay shall take effect [fol. 581] forthwith.

Dated: Honolulu, Hawaii, this 19th day of April, 1965.

Gilbert H. Jertberg, Circuit Judge, William T. Beeks, District Judge, Martin Pence, District Judge.

[File endorsement omitted]

[fol. 582]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

Civil No. 2308

HENRIETTA DAVIDSON HOLT, et al., Plaintiffs,

vs.

WILLIAM S. RICHARDSON, Lieutenant Governor of Hawaii, Defendant,

JOHN J. HULTEN, et al., and JOHN A. BURNS, Governor of Hawaii, Intervenors-Plaintiffs,

NELSON K. DOI, et al., and ELMER F. CRAVALHO, et al., Intervenors-Defendants.

DECISION AND ORDER ON HAWAII'S SENATE REAPPORTIONMENT PLAN OF APRIL 14, 1965—Dated April 28, 1965

This court has now before it the Hawaii State Legislature's H.B. No. 987, S.D. 1, C.D. 1; H.B. No. 773, S.D. 1, C.D. 1; and H.B. No. 986, setting forth that body's response to this court's order of March 9, 1965, viz., presenting (a) a plan for the provisional reapportionment of the Senate on the basis of the voters registered for the 1964 general election; (b) a proposed constitutional amendment encompassing the same plan; and (c) a submission to the electorate in 1966 of the question of calling a constitutional convention.

The road by which the above bills reached this court is tortuous. In August of 1964, when this court first heard this case, the Legislature of Hawaii was then sitting in special session called by the Governor of Hawaii for the specific purpose of attempting to devise a scheme of legislative reapportionment which would be constitutionally [fol. 583] valid. The legislature at that session failed to

agree on any reapportionment plan. After a hearing in January 1965, this court, on February 17, 1965, found that Article III, Section 2, of the Hawaii State Constitution fixing the number of senators per senatorial district, as well as the proviso at the end of the sixth paragraph in Section 2 of Article XV of the constitution, were invalid, "determined that the Senate *at least* must be reapportioned before the 1966 general election," and enjoined the Third State Legislature in its regular 1965 session from passing any but preliminary "housekeeping" acts until it had set up the machinery for the convening of a constitutional convention to amend the State's legislative scheme of apportionment before the 1966 election. (Emphasis added.)

On March 1st, 1965, the legislature, then convened in regular session, requested this court to alter its order of February 17th so as to permit the legislature itself during that session to pass legislation:

(a) enacting a provisional plan for reapportioning the senate on the basis of the 1964 registered voters, to be effective for the 1966 election and until a constitutional amendment on reapportionment had been adopted by the people of Hawaii as provided in the constitution;

(b) adopting a proposed constitutional amendment embodying pertinent provisions of the foregoing reapportionment plan to be presented to the electorate for ratification at the 1966 general election; and

(c) submitting to the electorate at that 1966 election the question, under Article XV of the State constitution: Shall there be a convention to propose a revision of or amendments to the constitution?

Counsel for all parties to the suit were in accord with the objectives outlined in the motion, and this court was [fol. 584] satisfied from the representations made that the constitutional convention route prescribed by its February 17th order would be very expensive and perforce would demand the devotion of great time and effort from the people

of Hawaii. The court, then, also believed that the legislators, each and all, would recognize their obligations to the entire electorate of Hawaii, would rise above any possible self-interest, would heed the admonitions of the Attorney General, and would certainly note the flashing red lights of the caveats set out in this court's order of February 17th, viz., that a constitutional convention *in addition* to providing for reapportionment of the senate might also consider (1) whether the registered voter population should continue to be used as the basis for apportionment, or some other type of population basis should be adopted; (2) "whether it is better to have one or both houses of the legislature composed of single member representative districts, or to have and *justify*[9] one or both houses composed in whole or in part, of multi-member or floterial districts. (Note) [9] *Butcher v. Bloom,* 203 A.2d 556, 572-73" (emphasis added); (3) whether there should be a change in the date of decennial reapportionment; and (4) whether there should be redistricting of the representative districts.

This court therefore, by order of March 9, 1965, altered its February 17th order to permit the legislature (a) to enact a provisional reapportionment and redistricting plan for the senate; (b) to adopt "a proposed constitutional amendment embodying *pertinent* provisions of the foregoing reapportionment and redistricting plan" for submission to the electorate at the 1966 general election (emphasis added); (c) to enact legislation to submit to the electorate the question: Shall there be a convention to [fol. 585] propose a revision of or amendments to the constitution? This order, like the one of February 17th, demanded that the plan be approved by this court; failing approval, the order of February 17th demanding legislation for implementing a constitutional convention would again become effective.

On March 18th this court was advised that a provisional plan, in substance approved by both houses, was then in conference committee and about ready to be presented to this court, whereby the senate was reapportioned by dividing the State into the same original six senatorial dis-

tricts, changing only the number of senators allocated to each district, based upon the use of the method of equal proportion. By that March 18th plan, two senators were apportioned to the first senatorial district—East Hawaii; one to the second—West Hawaii; two to the third—Maui; nine to the fourth—Southern Oahu; ten to the fifth—the remainder of Oahu; and one to the sixth—Kauai.

The legislature quickly thereafter was informally made to understand that such a grossly lumpy apportionment of senators, whereby forty per cent of the entire senate would come from one senatorial district and thirty-six per cent from another alongside, could never be approved, and the plan was forthwith withdrawn from conference committee for reconsideration by the house of representatives. Shortly thereafter, this court flashed an even brighter red light on its caveat number (2) above by informally indicating that because Hawaii had a multi-member district house, any other than single member senatorial districting would have to be justified to this court.

On April 14th, 1965, the legislature passed and sent to this court the numbered bills identified *supra*:

A. H.B. 987, its proposed provisional senatorial reap- [fol. 586] portionment plan; H.B. 773, its proposed constitutional amendment embodying that same plan; and H.B. 986, submitting to the electorate in the 1966 general election the question of the calling of a constitutional convention. By H.B. 987, the State was divided into eight senatorial districts, viz.:

County	*Senatorial District*	*No. of Senators*	*1964 Registered Voters per District*
Hawaii	First	3	28,130
Maui	Second	2	18,786
Honolulu	Third	3	27,073
"	Fourth	4	35,780
"	Fifth	4	39,361
"	Sixth	4	40,629
"	Seventh	4	37,336
Kauai	Eighth	1	12,266

B. Exhibits A and B, attached to the plan, the same being the reports of the conference committee on the proposed provisional plan (H.B. 987), as well as the proposed plan for the constitutional amendment (H.B. 773) embodying the same, setting forth the conference committee's "justification" for wholly abandoning any attempt to redistrict the senate on a single member district basis.

Senate exhibits Nos. 5 and 6 (maps also filed), outlined the geographical boundaries of the respective senatorial districts of Honolulu.

The court would agree that the number of registered voters per senatorial district and apportioned to the four basic areas, viz., three to the County of Hawaii, two to the County of Maui, nineteen to the City and County of Honolulu, and one to the County of Kauai, conforms to the standards required under the method of equal proportions prescribed by the Constitution of the State of Hawaii and thus meets that one test of constitutionality. *Roman* v. *Sincock,* 377 U.S. 695 (1964); *Reynolds* v. *Sims,* 377 U.S. 533 (1964).

In the attached committee reports, the reasons given, i.e., "justification", for choosing multi-member districts of [fol. 587] three and four senators per district were substantially: (1) single-member districts would tend to cause the senators therefrom to be concerned with localized issues and ignore the broader issues facing the State, and therefore it might fragment the approach to state-wide problems and programs to the detriment of the State; (2) historically the members of the house had represented smaller constituencies than members of the senate, and tradition and experience had proved that balance desirable; (3) multi-member districts would increase the significance of an individual's vote by focusing his attention on the broad spectrum of major community problems as opposed to those of more limited and local concern; (4) to set up single-member districts would compound the more technical and more intricate problem of drawing the boundaries; (5) population shifts would more drastically affect the boundaries of many smaller single-member districts—to a greater

degree than would be found in larger multi-member districts, citing Oahu's population boom and subdivision development.

In drawing the district lines the legislature reported that it "relied very heavily" on the standards of compactness and contiguity—"geographical separation and long-established representative precinct lines."

Except for the slightly misleading conclusion that the third senatorial district was *primarily* a suburban area, and that the fourth senatorial district was composed of substantially plantation and suburban communities, from the report it appears that no other criteria, save number of registered voters, geographical boundaries and historical representative district lines were considered or used in forming the plan. Apparently, ethnic, political, industrial, economic, social, occupational factors, and community of [fol. 588] interests and problems were given little if any consideration by the legislature.

The testimony of Senator Sakai Takahashi, chairman of the conference committee, at the April 15, 1965 hearing on the plan, summed up the legislature's underlying raison d'etre with his statement: "We thought it fair."

Mr. Robert Schmitt, statistician, who had testified at length in the hearing of August 1964, again a witness, testified in favor of applying the law of large numbers, viz., that smaller areas with small numbers fluctuate in much greater proportion than do larger areas with larger numbers, to senatorial districts. He, however, had *not been consulted* on the problem of the multi-member districts vs. single-member, or the problem of district lines.[1]

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[1] In its (unsubmitted) plan of March 18th, *supra* p. 4, two senators were to be elected from East Hawaii, and one senator from West Hawaii. The total registered voters in 1964 in East Hawaii was 20,770, and in West Hawaii was 7,360. In the present provisional plan, this division of the Island of Hawaii was dropped and three senators were to be elected from the first senatorial district, which would now include the entire island. Of the seven senators presently elected from districts one and two, five live within a short distance of each other in Hilo, in East Hawaii.

In analyzing the plant, all Mr. Schmitt could say for the third senatorial district was that it had excellent statistical boundaries.[2] It was logical to deduce from his testimony that the boundary between the fourth and fifth senatorial districts had accidentally resulted in an excellent *line of division,* in that it separated the military area, i.e., military housing, etc., from the city proper. The best that he could say, however, for the line between the fifth and sixth senatorial districts was that it neatly separated the central business district from residential areas alongside. The line between the sixth and seventh senatorial districts was historical.

Mr. Schmitt, in contradistinction to the conference committee, found it necessary to analyze the representative districts and criticized many of them as being far too [fol. 589] small, e.g., the first—on Hawaii, the thirteenth—Kalihi, on Oahu; or much too large, e.g., the fifteenth—with its six representatives. Schmitt pointed out that within the fifteenth district, in the Moiliili area, there was a higher proportion of persons of Japanese ancestry than in any census tract of the island, yet Waikiki, primarily concerned with tourist service, was the second highest among census tracts in percentage of Caucasian residents. Also, high-level professional, technical and managerial people tended to live in Waikiki or upper Manoa,[3] whereas operatives, laborers, clerical workers, middle and lower-middle income people lived in the central (Moiliili, etc.) area.

Mr. Schmitt stated that the fifth senatorial district likewise encompassed a highly heterogeneous area containing a multitude of Caucasian widows in the uplands area, and an overabundance of Filipino males in the seaward portion of the district. The twelfth representative district, therein,

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[2] The location of the residences of two of Honolulu's present total of ten senators is in this district.

[3] The residences of the three senators from the present fourth senatorial district showed that all lived only a very short distance apart in the upper Manoa area of the 15th representative district.

had a very high proportion of persons of foreign birth or Asiatic ancestry, of the lower-middle socio-economic group.[4] [fol. 590] Schmitt's only other comment regarding the fifth senatorial district was that the boundary between the twelfth and thirteenth representative districts, i.e., within the proposed fifth senatorial district, had a very unfortunate location.

Schmitt also pointed out that within the seventh senatorial district were two clearly defined and geographically, economically and socially divided groups. In Palolo in the 16th representative district area were found the lower socio-economic laborers, operatives, and clerical workers, and in the Waialae-Kahala and Aina Haina areas were the highly professional and managerial class. In the latter area the median annual family income in 1959 was almost $16,000, whereas in Palolo it was $3,000.

From the committee reports and the testimony of Senator Takahashi, it is obvious that the legislature gave sparse, if any, consideration of any of the facts or factors pointed out by Mr. Schmitt, in devising its scheme of multi-member senatorial districts for Oahu.

Although we initially determined that the house of representatives was not unconstitutionally apportioned, by that decision we did not say that those representative districts had been perfectly laid out. We agree with Mr. Schmitt that, compared to the makeup of all other representative districts in the State, the 15th is too large.

There can be no truly representative government without a system of apportionment which provides potentially equal representation to the divergent factors incorporated within the body politic. Our own representative form of government demands checks and balances, devices and procedures to channel the many and diverse interests of the people into the making of a stream of legislation that

[4] Similarly, three senators from the fifth district likewise lived a short distance from each other in the twelfth representative district.

[fol. 591] produces for each person in that state the maximum beneficence possible. Methods of securing this desired objective were pointed out in *Reynolds* v. *Sims, supra,* at 576-77:

> "Different constituencies can be represented in the two houses. One body could be composed of single-member districts while the other could have at least some multi-member districts. The length of terms of the legislators in the separate bodies could differ. The numerical size of the two bodies could be made to differ, even significantly, and the geographical size of districts from which legislators are elected could also be made to differ. And apportionment in one house could be arranged so as to balance off minor inequities in the representation of certain areas in the other house. In summary, these and other factors could be, and are presently in many States, utilized to engender differing complexions and collective attitudes in the two bodies of a state legislature, although both are apportioned substantially on a population basis."

In reapportioning and redistricting the senate, both houses overlooked the fact that, to be valid, the makeup of the senate must positively complement the makeup of the house, to provide the vital equality of voter representation. Both houses of the legislature seemingly forgot that the schemes of districting *each* house, when conjoined, must offer compensating advantages to the voters—not only to those voters within each representative district, be it senate or house, but to all voters throughout the State. While there perforce must be some overlap of representation with the several senate and house districts, that overlap must not be such as to concentrate and intensify the voting power of a single senatorial-representative district to the point that the voters therein have a built-in disproportionate representational advantage over any other voters of the State.

If the achievement of this goal is even to be approached, there should not be any monolithic political units of representation in that all-inclusive system of apportionment. Unless, within any single geographically defined political area or unit, there is a meaningful and substantial differ- [fol. 592] ence in the composition of that body of electors therein, whose combined votes elect a senator, from that body whose combined votes elect a member of the house, then the demanded differing complexions and collective attitudes are lost, the necessary cross checking and resulting balance is absent, and the majorities therein are given a disproportional monolithic command, not only within the narrow political unit, but also within the legislative bodies. Such artificially concentrated political power negates any notion of equality of representation for the minorities entrapped therein, as well as for all other electors of the State outside such a monolithic political unit.

> "However complicated or sophisticated an apportionment scheme might be, it cannot, consistent with the Equal Protection Clause, result in a significant undervaluation of the weight of the votes of certain of a State's citizens merely because of where they happen to reside." *WMCA* v. *Lomenzo,* 377 U.S. 633, 653.

The Hawaiian legislature, whether innocently or designedly, has, nevertheless, built just such monoliths into its reapportionment scheme.

In its effort to achieve its objective of multi-member (three and four) senatorial districts in Honolulu, the legislature made the boundaries of the third senatorial district and the eighth representative district one and the same. Thus from *one* political and geographical unit would be elected four representatives and three senators—seven members of the legislature all responsible to and representing exactly the same constituency! Similarly, the sixth senatorial district was fashioned almost entirely from the fifteenth representative district, with the result that from

the fifteenth representative unit, i.e., from the dominant three-fourths of the voting population of that senatorial district, would come six representatives and four senators. [fol. 593] (31,302 of the senatorial district's total of 40,629 voters reside in the fifteenth representative district.)

While it is a fundamental factor under the decisions of The Court, population is not the sole definitive measure for setting up either representative or senatorial districts. Compactness and contiguity of the territory are admittedly also factors, but community of interests, community of problems, socio-economic status, political and racial factors—each and all must be considered, and not only must the electoral districts be laid out with the totality of those factors having been taken into consideration, but even more, the sum total of all of the districting must result in substantial equality of meaningful representation to each and all of the voters of the State. "(A)ll who participate in the election are to have an equal vote—whatever their race, whatever their sex, whatever their occupation, whatever their income and wherever their home may be in that geographical unit." *Gray* v. *Sanders,* 372 U.S. 368, 379. As indicated, not only was there no totality of consideration of the above factors in setting up the senatorial districts on Oahu, but there was even less totality of consideration of the factors of equal representation to all voters on Oahu and the rest of the State.

Here, the realistic political weight of the voters in both the third and sixth senatorial districts would far exceed the political weight of any voter in any other district, not only in Honolulu but in any other county of the State. It is patent to the court that both the house and the senate, in setting up the senatorial plan either failed or refused to recognize the effect that such a plan would have upon the basis for representation of the entire voting population. Both the Hawaiian senate and house ignored the [fol. 594] admonition of the Supreme Court:

> "(I)n reviewing a state legislative apportionment case this court must of necessity consider the challenged

> scheme *as a whole* in determining whether the particular State's apportionment plan, in its entirety, meets federal constitutional requisites. It is simply impossible to decide upon the validity of the apportionment of one house of a bicameral legislature in the abstract, without also evaluating the actual scheme of representation employed with respect to the other house. Rather, the proper, and indeed indispensable, subject for judicial focus in a legislative apportionment controversy is the overall representation accorded to the State's voters, in both houses of a bicameral state legislature." *Maryland Committee* v. *Tawes,* 377 U. S. 656, 673. (Emphasis added.)

This court heretofore said that the house was not unconstitutionally apportioned. This court indicated the means by which the senate could be apportioned to give to every voter the equal protection and equal representation that he is entitled to without disturbing the makeup of the house, but because both houses failed to look at the political scene in its totality and instead viewed the reapportionment scheme of the senate as if it were something that could be fashioned without consideration of its tight juxtaposition to the house of representatives, each house of the legislature jointly and separately took such a myopic view of the political problem involved, that they failed to see and anticipate the overall result of arbitrarily joining their independently constructed senatorial plan with the existing representative scheme.[5] As indicated, both houses failed to heed the words of the Supreme Court, as well as any of the red lights this court had flashed. Both houses failed to heed the advice of the Attorney

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[5]As foretold in *Fortson* v. *Dorsey,* 379 U. S. —— (1965) "it might well be that, designedly or otherwise, a multi-member constituency apportionment scheme, under the circumstances of a particular case, would operate to minimize or cancel out the voting strength of racial or political elements of the voting population."

General of the State of Hawaii, and the end result, based as it is upon reasons which fall very, very short of justifying the resultant multi-member districting of both houses, [fol. 595] fails to give to each and every voter of the State of Hawaii the fundamental equality of representation to which each is entitled under the Fourteenth Amendment.

Even if the above, alone, were not enough to render the proposed scheme invalid, it is manifest to this court that the legislature's adamant insistence on three and four-member senatorial districting was the conscious or unconscious—though not unnatural—reluctance of the affected senators to carve out single-member districts which thereafter would in all probability result in a political duel-to-the-death with a fellow and neighbor senator. To have cross-cut any of the Honolulu's eighth, twelfth or fifteenth representative districts in order to mark out single-member senatorial districts would, with practical certainty, have left two or three present incumbents to compete head on for a single senatorial seat.

Likewise, the shift on Hawaii from the double, 2-1 senator district scheme, tentatively adopted on March 18th, to the single 3-senator district in the instant plan, was an unmistakable application to East Hawaii's incumbent senators of that same factor of political self-preservation implanted into the Honolulu districting scheme.[6]

[fol. 596] This court finds that the present multi-member district scheme of senatorial reapportionment resulted, in a material part at least, from gerrymandering.

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[6] "(I)n the absence of any reasonable justification (historical or otherwise), such districting (creation of single-member and multi-member districts) might be the result of gerrymandering for partisan advantage and, in that event, would be arbitrary and capricious. In the light of the constitutional pitfalls inherent in such a districting scheme, it would be more prudent to approach the matter of apportionment by setting up single-member districts unless valid and compelling reasons exist which require the creation of some multi-member districts." *Butcher* v. *Bloom*, 203 A.2d 556, 573.

We find the proposed plan does not meet the test of equality of representation set down by our Supreme Court and is invalid. We therefore do not approve the plan.

Circuitous or expensive as it may be, the route set out by the Constitution of this State, viz., by way of a constitutional convention, must now be followed. Inasmuch as the plan set forth in H.B. 987 cannot be and is not approved by this court, It Is Therefore Ordered:

(1) The stay order of this court dated April 19, 1965, is rescinded, effective forthwith; and

(2) As indicated in our Final Order of March 19, 1965, item 4 on pages 19-20, and item 6 on pages 20-21 of the Decision and Order of this court dated February 17, 1965, be and they are hereby automatically reinstated and now remain and shall continue in full force and effect until further order of this court.

As may be noted, this court has not herein discussed H.B. 773. We are advised that it was able to pass the senate by but the barest majority, 13-12, far short of the two-thirds demanded by the State constitution for the adoption of a proposed constitutional amendment. The same also has not yet lain on the desk of the Governor for the ten days prior to final adoption, as provided by the constitution.[7] Therefore, procedurally, the same has [fol. 597] not yet been submitted to us. *Wright* v. *Rockefeller,* 376 U.S. 52, 58. Even if it were, nevertheless, in view of our decision on the provisional plan, H.B. 987, we would not and now do not find it necessary to consider

[7] In order to move the reapportionment problem with the greatest celerity, this court, nevertheless, had advised all parties that a provisional plan of reapportionment could be submitted to this court and a hearing had thereon immediately after the same was passed by the legislature and before the ten-day period during which a proposed amendment must lie on the desk of the Governor before the same can be adopted and passed. The instant hearing therefore was solely upon the matter of the proposed provisional plan.

the validity of the proposed amendment, H.B. 773, or the question proposed by H.B. 986.

This court continues to retain jurisdiction of this action for all purposes.

This decision shall take effect forthwith.

Dated: Honolulu, Hawaii, this 28th day of April, 1965.

Gilbert H. Jertberg, Circuit Judge, William T. Beeks, District Judge, Martin Pence, District Judge.

[fol. 612] [File endorsement omitted]

[fol. 613]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

Civil No. 2308

[Title omitted]

NOTICE OF APPEAL OF JOHN A. BURNS, GOVERNOR OF HAWAII, TO THE SUPREME COURT OF THE UNITED STATES—Filed May 3, 1965

I. Notice is hereby given that John A. Burns, Governor of Hawaii, an intervenor-plaintiff above named, hereby appeals to the Supreme Court of the United States from the order of February 17, 1965, entered on April 9, 1965, denying injunctive relief as prayed for by intervenor-plaintiff, and enjoining the legislators of the Third Legislature, General Session, State of Hawaii, from enacting any legislation until reapportionment legislation satisfactory to the court has been enacted, and also from the order of April 28, 1965, entered on April 28, 1965, reinstating the injunction against said legislators.

This appeal is taken pursuant to 28 U.S.C.A. section 1253.

[fol. 614] II. The clerk will please prepare a transcript of the complete record in this cause for transmission to the Clerk of the Supreme Court of the United States, including, but not limiting said transcript to, all papers filed by the parties herein.

III. The following questions are presented by this appeal:

1. Did the district court, in seeking to compel the legislature of the State of Hawaii to enact reapportionment legislation in compliance with the Equal Protection Clause of the 14th Amendment to the Federal Constitution, abuse its discretion through the employment of excessive and drastic measures, to wit, the prohibition of enactment by the legislature of legislation essential for the normal operation by State and municipal offices in Hawaii and essential for the continuation of programs necessary for the health and welfare of the people of Hawaii until such time as reapportionment legislation had been passed to the satisfaction of the district court?

2. Whether the apportionment of the senate and of the house of representatives of the Hawaii State legislature, considered as a whole, is inseverable, so that the invalidity of the apportionment of the senate results in the invalidity of the house of representatives as well.

3. Whether the Hawaii legislature has the power to enact at least temporary legislation reapportioning the legislature pending the adoption of an amendment to the Hawaii Constitution comporting with Federal constitutional requirements.

[fol. 615] 4. Whether the Equal Protection Clause requires that the apportionment of delegates to a constitutional convention called for the purpose of amending the Hawaii Constitution be substantially on a population basis.

5. Whether the Equal Protection Clause requires that both houses of the Hawaii legislature consist of representatives from single-member districts, unless there are shown valid and compelling reasons to justify some multi-member districts.

6. Whether the Equal Protection Clause requires that no later than at the 1966 general election, amendments to the Hawaii Constitution providing for a permanent reapportionment plan shall be submitted to the electorate for ratification.

7. Whether the apportionment scheme for the house of representatives of the Hawaii legislature results in invidious discrimination in favor of larger multi-member districts and against single-member and smaller multi-member districts.

8. Whether registered voters is a valid basis for the apportionment of seats to the Hawaii legislature.

Dated: Honolulu, Hawaii, May 3, 1965.

Bert T. Kobayashi, Attorney General, State of Hawaii, Attorney for John A. Burns, Intervenor-Plaintiff, Iolani Palace Grounds, Honolulu, Hawaii 96813.

[fol. 616] Proof of Service (omitted in printing).

[fol. 620] [File endorsement omitted]

[fol. 621]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

Civil No. 2308

[Title omitted]

MOTION TO SUSPEND INJUNCTION AND FOR STAY OF ORDER PENDING APPEAL—Filed May 7, 1965

Upon the affidavit of The Honorable John A. Burns, Governor of Hawaii, attached hereto, and the proceedings heretofore had herein, John A. Burns, Governor of Hawaii, one of the intervenor-plaintiffs above named, moves this Honorable Court for an order suspending the injunction heretofore entered against all members of the legislature, intervenor parties herein, and staying the order entered April 28, 1965, pending the hearing and determination of the appeal of said John A. Burns to the Supreme Court of the United States from the orders of this Honorable Court entered on April 9, 1965 and April 28, 1965, and for such other and further relief as to this Honorable Court may be just.

Dated: Honolulu, Hawaii, May 6, 1965.

Bert T. Kobayashi, Attorney General, State of Hawaii, Attorney for John A. Burns, Intervenor-Plaintiff.

[fol. 622]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

Civil No. 2308

[Title omitted]

ATTACHMENT TO MOTION

AFFIDAVIT OF JOHN A. BURNS—Filed May 7, 1965

State of Hawaii,
City and County of Honolulu, ss.

John A. Burns, being first duly sworn, deposes and says:

1. That he is Governor of the State of Hawaii;

2. That he is an intervenor-plaintiff in this cause;

3. By order dated February 17, 1965 (entered April 9, 1965) this Court enjoined the legislature from taking final action upon any legislation until it shall first have enacted legislation providing (a) for submission to the electorate at a special election to be held not later than August 1, 1965, the question: "Shall there be a convention to propose a revision of or amendments to the constitution?", and for [fol. 623] any and all acts required by law to implement such legislation, pursuant to Article XV of the Hawaii State Constitution; (b) that if the vote be in the constitutional affirmative, then a special election be held not later than September 15, 1965 to elect delegates to the convention in the manner provided in the Constitution; (c) that the convention convene not later than October 15, 1965; and (d) that it conclude its deliberation in time to submit its proposed constitutional amendments to the electorate of Hawaii at a special election to be held not later than January 30, 1966, including (but not limiting the convention thereto) provisions for reapportioning the senate of Hawaii on a constitutionally valid basis.

By order dated March 9, 1965 this Court amended and altered the order, and by such amendment and alteration, in lieu of the February 17, 1965 injunction, it enjoined the legislature from taking final action on any legislation until it had first enacted (a) a provisional plan reapportioning the senate, (b) a constitutional amendment embodying such senatorial reapportionment, and (c) submission to the people at the 1966 general election the question: "Shall there be a convention to propose a revision of or amendments to the constitution?". Pursuant thereto the legislature submitted to this Court such a reapportionment plan on April 14, 1965. On April 19, 1965 the Court stayed the injunction, so that the legislature could take final action on legislation. By decision and order dated April 28, 1965, this Court rejected the senate reapportionment plan submitted by the legislature and reinstated the injunction against and direction to the legislature contained in the order dated February 17, 1965, *supra*.

[fol. 624] 4. The Court imposed its injunction on the 58th legislative day, with only two days left of the 60-day general session. All legislation pending when the injunction was imposed would, without exception, have died as of midnight April 30, 1965. Such legislation included absolutely essential bills, as indicated hereinafter, among them the operating budget bill, without which State government operations would grind to a halt on July 1, 1965. This would have resulted in utter waste of the monumental legislative work done on complex legislation and endangering of public health and welfare, as well as stoppage of the operation of government. The Governor of necessity had to extend the session and he has extended it for seven days, with the attendant expense and imposition upon the taxpayers.

However, 60 days of the regular session and nearly all of the extended session have passed. Yet the legislature has been unable to enact legislation for a constitutional convention in accordance with the order of this Court be-

cause of differences of opinion among its members. It appears that a majority of the legislature are opposed to the calling of a convention, not only because of the expense and the lengthy and circuitous procedure involved but also because of the not unwarranted apprehension that a convention may open the Pandora's box of wholesale revision of the Constitution which is uncalled for at this time.* Senate Bill No. 475, S.D. 1, calling for a constitutional convention, was defeated on third reading in the senate on May 5, 1965. There is no reasonable prospect that the legislature will be able to enact the required legislation hereafter so as to warrant any further extension of the session, and accordingly there is no assurance that the Governor will extend the session further. Therefore it appears inevitable that there will be a complete failure of resolution of the problem—i.e. no convention legislation and a loss [fol. 625] and waste of so much of the herculean and nearly complete legislative work** on essential measures accomplished during the preceding 57 days of the session and during extensive pre-session hearings, to the detriment of the health and welfare of the people—unless the Court grants a stay.

A stay will save legislation essential for continuation of operations of State government and of programs necessary for the health and welfare of the people; it will remove the probability of an unnecessary test of State legislative and Federal judicial authority; it will allow an orderly and full review by the U. S. Supreme Court and will provide an opportunity for a calmer, more dispassionate resolution of the problem before the 1966 elections on the basis of more definite official guidelines—either by legislative ac-

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* The State Constitution has been in effect only since August 21, 1959. It is the product of considered and dedicated deliberation and should be given an opportunity for fuller operation. The legislature cannot restrict the subject matter of a constitutional convention.

** See paragraph 7, *infra*.

tion at a special or regular session* or by judicial action on the basis of plans submitted to the Court or otherwise.

5. That some of the parties, among them the legislators intervenors-defendants and the affiant, believe that they should have the benefit of the United States Supreme Court's passing upon certain determinations of law made by this Honorable Court, with which they are in genuine and honest disagreement. If the injunction is not stayed and in the unlikely event that a convention is convened which proposes constitutional amendments for reapportionment, the U. S. Supreme Court may deem it unnecessary to review the matter and the opportunity for review would be irretrievably lost. Moreover, if this Honorable Court [fol. 626] were in error in any of its determinations, if the opportunity for review were lost as aforesaid, then (a) the people of the State would have been needlessly put to the expense and circuity of reapportionment by constitutional convention and/or (b) the convention might be proceeding on erroneous assumptions of law with the result that the plan devised by the convention may be subject to challenge and ultimately be declared invalid. A stay of the injunction pending review on appeal would facilitate fair and orderly review of all appealable issues, without jeopardizing the enactment of laws necessary for the operation of government and for the health and welfare of the people.

6. By its decision of February 17, 1965, this Court declared that the State senate is malapportioned, but that

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* Affiant does not discount further legislative action notwithstanding the failure of the legislature to enact valid reapportionment legislation heretofore, because he believes and respectfully submits that at least part of such failure has been due to a lack of sufficient, precise official guidelines and of judicial precedents relative to the situation in Hawaii, compounded by the fact that this Honorable Court had found and declared the State house of representatives not to be improperly apportioned, and such declaration carried with it confusing implications that were not completely unwarranted.

the State house of representatives is not. By its amended order of March 9, 1965, this Court directed the legislature to reapportion the *senate* for the 1966 elections and to embody such *senatorial* reapportionment in a constitutional amendment.

This led to the not unexpected inference by legislators that the apportionment of the house of representatives need not or could not be altered under the terms of the order of the Court and that such apportionment was constitutionally sound, and so they focused their attention solely on the apportionment of the senate and adopted a senatorial reapportionment similar to that of the house of representatives. Furthermore, historically the people of Hawaii have experienced only multi-member district representation that is based not on democratic considerations but rather, is accounted for by the feudalistic background of the history of government in the Islands. There is an absence of familiarity with single-member districting based [fol. 627] on demographic and sociological considerations referred to by the Court in its April 28, 1965 decision.

There was a lack of clear, definitive official guidelines for the legislature to follow in the February 17 or March 9, 1965 orders of the Court, and the legislature confined itself to factors, such as equality of population per senator and selection of established lines as district boundaries. In view of the foregoing, the legislature's reapportionment plan submitted on April 14, 1965 was not unexpected.

7. That the injunction is preventing the enactment of legislation essential for normal operation by State and municipal offices in Hawaii and essential for continuation of programs necessary for the health and welfare of the people of Hawaii, as well as for needed new facilities. Among such bills are:

A. The operating budget for the fiscal year 1965-1966, necessary for operation of departments of the State government, including compensation of all officers and employees, and payment of costs of supplies

equipment. Under the State Constitution failure of passage of this bill may mean that there will be no legal authorization to expend any funds for State government operations on and after July 1, 1965, the date of commencement of the new fiscal year. The bill (H. B. No. 144, H. D. 1, S. D. 1, C. D. 1) which has been reported out by the senate-house conference committee and adopted by the house of representatives, needs only adoption by the senate in order to become law. Said bill appropriates the amounts indicated for the following departments of the State government:

[fol. 628]

Department of Education	$53,279,160
University of Hawaii Included is an appropriation for establishment of a State-wide educational television system.	21,049,728
Department of Agriculture	2,125,211
Department of Land and Natural Resources	2,612,713
Department of Planning and Economic Development Included herein are appropriations for the foreign trade zone and promotion of tourism.	2,089,440
Department of Transportation	184,849
Department of Defense	965,535
Department of Health	10,824,245
Courts	3,045,819
Department of Labor and Industrial Relations	794,436

Department of Social Services This department administers the prison system, public housing, the public welfare program, juvenile detention and rehabilitation, aid to the blind, disabled and aged.	$14,641,649
Department of Accounting and General Services	2,925,435
Department of the Attorney General	564,422
Department of Budget and Finance Included are $15,586,160 for payment of principal and interest on State bonds and $8,525,930 for the government's payment to the public employees' retirement system.	29,685,641
Governor's Office	808,668
Lieutenant Governor's Office	159,953
Department of Personnel Services	409,389
[fol. 629] Department of Regulatory Agencies Included are the bank examination program, insurance regulation, the public utilities Commission, professional and vocational licensing program.	1,072,238
Department of Taxation	2,765,047
Subsidies to quasi-public tuberculosis hospitals (Kula Sanatorium, Maui; Leahi Hospital, Oahu; Hilo Hospital, Hawaii; Samuel Mahelona Memorial Hospital, Kauai)	3,556,279
Other subsidies and appropriations for general hospitals and veterans' cemeteries	422,800

Failure of passage of the operating budget bill will jeopardize receipt of federal funds for the following federal programs, among others: manpower development and training, the science, mathematics and foreign languages program, area redevelopment, civil defense, vocational rehabilitation, old age survivors' insurance, the Hansen's disease program.

B. The capital improvements program bill (S. B. No. 190, S. D. 2, H. D. 1). It authorizes capital expenditures totaling $171,416,771. The bill has received three readings in each house but because of disagreement between the houses as to certain amendments, the bill is now in conference. This amount includes $65,606,200 for highways, a large part of which consists of federal aid, which would be jeopardized if the bill is not passed. It also includes $11,788,104 for buildings and other facilities at schools and public libraries, and $3,284,500 for a new community college system.

[fol. 630] C. A bill to provide revenues for the above expenditures, including revision and reform of the tax system (S. B. No. 656, S. D. 2, H. D. 1). This bill has received three readings in each house, but because of disagreement between the houses as to certain amendments, the bill is now in conference.

D. Among other major bills are those providing for a new pay scale for teachers (H. B. No. 279, H. D. 2); establishing community mental health programs and programs on mental retardation (H. B. No. 99, H. D. 2, S. D. 1); overall revision and reform of laws relating to public education (H. B. No. 49, H. D. 1, S. D. 1); expansion of research and programs on problems of the aged (H. B. No. 106, H. D. 1).

Existing circumstances and equitable considerations in the interests of the general welfare of the people of Hawaii

dictate that the Court should stay its injunction pending appeal to the U. S. Supreme Court.

For all of the foregoing reasons, affiant respectfully petitions this Court to stay its injunction against enactment of legislation.

Further affiant sayeth not.

John A. Burns

Subscribed and sworn to before me this 6th day of May, 1965.

(Seal)

Rose U. Okinishi, Notary Public, First Judicial Circuit, State of Hawaii. My commission expires March 3, 1968.

[fol. 631]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

Civil No. 2308

[Title omitted]

APPLICATION TO FIX TIME FOR HEARING AND ORDER THEREON —Filed May 7, 1965

John A. Burns, Governor of Hawaii, intervenor-plaintiff, hereby applies for an order to fix Monday, May 10, 1965, 2:00 P.M., or as soon thereafter as the Court may fix, as the date for the hearing of the Motion to Suspend Injunction and for Stay of Order Pending Appeal. This application is brought under Rule 6(d) to fix the time of hearing and waiver of five days' notice.

Dated: Honolulu, Hawaii, May 6, 1965.

Bert T. Kobayashi, Attorney General, State of Hawaii.

It Is So Ordered:

Martin Pence, United States District Judge.

[fol. 632]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

Civil No. 2308

NOTICE OF MOTION—Filed May 7, 1965

To:

Charles M. Tonaki, Esq., Barry J. Rubin, Esq., 1201 First National Bank Building, Honolulu, Hawaii (Counsel for Plaintiffs).

Masaji Marumoto, Esq., 235 Queen Street, Honolulu, Hawaii (Associate Counsel for Plaintiffs).

Robert G. Dodge, Esq., Trustco Building, Honolulu, Hawaii (Counsel for Defendant William S. Richardson).

John J. Hulten, The Senate, State of Hawaii, Iolani Palace Grounds, Honolulu, Hawaii.

George R. Ariyoshi, The Senate, State of Hawaii, Iolani Palace Grounds, Honolulu, Hawaii.

O. Vincent Esposito, The Senate, State of Hawaii, Iolani Palace Grounds, Honolulu, Hawaii.

Mitsuyuki Kido, The Senate, State of Hawaii, Iolani Palace Grounds, Honolulu, Hawaii.

Taylor A. Pryor, The Senate, State of Hawaii, Iolani Palace Grounds, Honolulu, Hawaii.

Sakae Takahashi, The Senate, State of Hawaii, Iolani Palace Grounds, Honolulu, Hawaii.

Vincent H. Yano, The Senate, State of Hawaii, Iolani Palace Grounds, Honolulu, Hawaii.

George M. Okano, House of Representatives, State of Hawaii, Iolani Palace Grounds, Honolulu, Hawaii.

[fol. 633] Robert Kimura, Esq., Office of the Senate Majority Attorneys, Schuman Building, Honolulu, Hawaii (Counsel for Nelson K. Doi, et al., intervenors-defendants).

James T. Funaki, Esq., Office of the House Majority Attorneys, Schuman Building, Honolulu, Hawaii (Counsel for Elmer F. Cravalho, et al., intervenors-defendants).

William T. Furtado, House of Representatives, Iolani Palace Grounds, Honolulu, Hawaii.

Joseph R. Garcia, Jr., House of Representatives, Iolani Palace Grounds, Honolulu, Hawaii.

Takeshi Kudo, House of Representatives, Iolani Palace Grounds, Honolulu, Hawaii.

Frank W. C. Loo, House of Representatives, Iolani Palace Grounds, Honolulu, Hawaii.

George W. T. Loo, House of Representatives, Iolani Palace Grounds, Honolulu, Hawaii.

Toshi Ansai, The Senate, State of Hawaii, Iolani Palace Grounds, Honolulu, Hawaii.

John G. Duarte, The Senate, State of Hawaii, Iolani Palace Grounds, Honolulu, Hawaii.

James F. Fleming, The Senate, State of Hawaii, Iolani Palace Grounds, Honolulu, Hawaii.

William H. Hill, The Senate, State of Hawaii, Iolani Palace Grounds, Honolulu, Hawaii.

[fol. 634] Bernard G. Kinney, The Senate, State of Hawaii, Iolani Palace Grounds, Honolulu, Hawaii.

Noboru Miyake, The Senate, State of Hawaii, Iolani Palace Grounds, Honolulu, Hawaii.

Clinton I. Shiraishi, The Senate, State of Hawaii, Iolani Palace Grounds, Honolulu, Hawaii.

Julian R. Yates, Sr., The Senate, State of Hawaii, Iolani Palace Grounds, Honolulu, Hawaii.

Please Take Notice that the undersigned will bring the foregoing Motion to Suspend Injunction and for Stay of Order Pending Appeal on for hearing before this Court on Monday, the 10th day of May, 1965, at 2:00 p.m., or as soon thereafter as the Court may fix.

Dated: Honolulu, Hawaii, May 6, 1965.

Bert T. Kobayashi, Attorney General, State of Hawaii.

[fol. 635] Certificate of Service (omitted in printing).

[fol. 641] [File endorsement omitted]

[fol. 642]

In the United States District Court

For the District of Hawaii

Civil Action No. 2308

[Title omitted]

Notice of Appeal of Hawaii State Senators Kazuhisa Abe, et al. to the Supreme Court of the United States—Filed May 7, 1965

I

Notice is hereby given that the Hawaii State Senators, Kazuhisa Abe, George R. Ariyoshi, Nelson K. Doi, O. Vincent Esposito, William E. Fernandes, John J. Hulten, Anna F. Kahanamoku, Mitsuyuki Kido, Benjamin Menor, Taylor A. Pryor, Sakae Takahashi, David K. Trask, Jr., John T. Ushijima, Vincent H. Yano, and Nadao Yoshinaga parties herein, hereby appeal to the Supreme Court of the United States from the Decision and Order of February 17, 1965, entered on April 9, 1965, and from the Decision and Order

on Hawaii's Senate Reapportionment Plan of April 14, 1965, entered in this action on April 28, 1965.

This appeal is taken pursuant to 28 U.S.C.A., Section 1253.

[fol. 643]

II

This appeal is being taken concurrently with the appeal of John A. Burns, Governor of Hawaii, Intervenor-Plaintiff, herein. The transcript of record on appeal of the Intervenor-Plaintiff is the same as that required by this appeal. The Clerk is requested to transmit this transcript to the Clerk of the Supreme Court of the United States.

III

The following questions are presented by this appeal:

(1) Did the District Court, in seeking to compel the legislature of the State of Hawaii to enact reapportionment legislation in compliance with the Equal Protection Clause of the Fourteenth Amendment, abuse its discretion through the employment of excessive and drastic measures, to wit, the prohibition of enactment by the legislature of legislation essential to the normal operation by state and municipal government offices in Hawaii and essential for the continuation of programs necessary for the health and welfare of the people of Hawaii until such time as reapportionment legislation had been passed to the satisfaction of the District Court?

(2) Was the District Court, after assuming the task of approving a legislative reapportionment plan, bound to construe such a plan on the basis of its "constitutionality" as contrasted from its "desirability" to the Court?

(3) Did the District Court, in holding the Senate Reapportionment Plan presented in H. B. No. 987, S. D. 1, C. D. 1, did not meet the test of equality of representation, depart from constitutional standards in construing the plan?

[fol. 645] (4) Did the District Court commit error by not giving the plan a presumption of validity and by not placing the burden of proof upon the opponents of the said Senatorial Reapportionment Plan to specify the constitutional defects in such plan?

(5) Did the District Court act capriciously in finding that the said Senatorial Reapportionment Plan was a result of gerrymandering, where no evidence was submitted by any party to the action that the plan was so motivated?

(6) Was the District Court in error in concluding that the incumbent senators in at least three proposed senatorial districts, by the mere fact of their close residential proximity, were motivated by political self-preservation in favoring a plan incorporating multi-member districts over single-member districts?

(7) Are multi-member representative districts per se unconstitutional?

(8) If the above question is answered in the negative:

a. Should only one house of a bicameral legislature be justified in having multi-member districts?

b. Given the desirability of equal representation, what if any constitutional justification is there for allowing multi-member representative districts in one house of a bicameral legislature while not allowing it in the other?

(9) Where a constitutionally sound apportionment plan has been enacted by the legislature, should it be struck down because the court subsequently finds that some factors were not considered in its structuring?

(10) Was the District Court, having found that the legislature considered the number of registered voters, geographic compactness and contiguity, and historic and [fol. 646] established political boundaries in its enactment of H. B. No. 987, S. D. 1, C. D. 1, in error in its Decision and Order on Hawaii's Senate Reapportionment Plan of

April 14, 1965, entered on April 28, 1965, in stating that factors such as community of interests, community of problems, socio-economic status, political and racial factors must each and all be considered and integrated into the structuring of the proposed senatorial districts?

(11) Does the equal protection clause of the Fourteenth Amendment of the United States Constitution prohibit both houses of a bicameral legislature from having multi-member districts where each vote is given substantially equal weight throughout the state and where such multi-member district can be justified?

(12) Does the fact that the District Court ruled by its Decision and Order of February 17, 1965, that the multi-member House of Representatives of the State of Hawaii was constitutionally apportioned, preclude consideration of an apportionment plan to include multi-member districts for the Senate of the State of Hawaii, where the District Court in the same Decision and Order set forth guidelines for a constitutional convention and suggested that the convention consider "whether it is better to have one or both houses of the legislature composed of single-member representative districts or to have and justify one or both houses composed in whole or in part of multi-member or floterial districts."?

(13) Were the conditions and sanctions imposed by the District Court for the reapportionment of the legislature unreasonable and arbitrary so as to constitute an invasion of the legislative function and an abuse of discretion by the Court?

[fol. 647] Dated at Honolulu, Hawaii, this 6th day of May, 1965.

Robert Kimura, Attorney for the Hawaii State Senators Kazuhisa Abe, et al, Office of the Senate Majority Attorney, Schuman Building, Honolulu, Hawaii.

[fol. 648] Proof of Service (omitted in printing).

[fol. 651] [File endorsement omitted]

[fol. 652]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

Civil No. 2308

[Title omitted]

NOTICE OF APPEAL OF ELMER F. CRAVALHO, ET AL. TO THE SUPREME COURT OF THE UNITED STATES—Filed May 7, 1965

I

Notice is hereby given that Elmer F. Cravalho, et al., Intervenors-Defendants above named, hereby appeal to the Supreme Court of the United States from the Decision and Order, dated February 17, 1965, and entered in this action on April 9, 1965, enjoining the legislators of the Third Legislature of the State of Hawaii, General Session of 1965, from enacting any legislation until reapportionment legislation satisfactory to the court has been enacted, and also from the Decision and Order on Hawaii's Senate Reapportionment Plan of April 14, 1965, dated and entered in this action on April 28, 1965, reinstating the injunction against said legislators.

This appeal is taken pursuant to 28 U.S.C.A., Section 1253.

[fol. 653] II

John A. Burns, Governor of Hawaii, Intervenor-Plaintiff above named, has taken an appeal in this cause heretofore on May 3, 1965. The transcript of record on the appeal herein shall be the same as the transcript of record designated in the notice of appeal of John A. Burns, Intervenor-Plaintiff above named.

The clerk will please prepare the same transcript of record in this cause, for transmission to the Clerk of the Supreme Court of the United States.

III

The following questions are presented by this appeal:

1. Did the District Court, in seeking to compel the legislature of the State of Hawaii to enact reapportionment legislation in compliance with the Equal Protection Clause of the 14th Amendment of the Constitution of the United States, abuse its discretion through the employment of excessive and drastic measures, to wit: the prohibition of enactment by the legislature of legislation essential for the operation of state and county governments in Hawaii and essential for the continuation of programs necessary for the health and welfare of the people of Hawaii until such time as reapportionment legislation has been passed to the satisfaction of the District Court?

2. Does the reapportionment plan for the Hawaii Senate, H. B. No. 987, S. D. 1, C. D. 1, which the legislature of the State of Hawaii submitted to the District Court on April 14, 1965, pursuant to the order of the District Court, violate the Equal Protection Clause of the 14th Amendment of the Constitution of the United States?

[fol. 654] 3. Does the Equal Protection Clause of the 14th Amendment of the Constitution of the United States necessarily require that the Hawaii Senate be apportioned in accordance with a rule of single member districts where the House of Representatives, with single member and multi-member districts, has been found to be constitutionally apportioned?

4. Where the legislature of the State of Hawaii has constructed senatorial districts with substantial equality of population for each district in accord with the number of senators to be elected from the respective senatorial district, does the legislature have the burden of justifying

that such reapportionment plan does not operate to minimize or cancel out the voting strength of political, social, economic, or racial elements of the voting population, or do the opponents of such plan have the burden of demonstrating such invidious results?

5. Where the legislature of the State of Hawaii has constructed senatorial districts with substantial equality of population for each district in accord with the number of senators to be elected from the respective senatorial district, and where the House of Representatives, with single member and multi-member districts, has been found to be constitutionally apportioned, does the legislature of the State of Hawaii have the burden of justification that the two houses complement each other so that there is no violation of the United States Constitution, or do the opponents of such reapportionment plan have the burden of demonstrating that the two house fail to complement each other to such an extent that there is a violation of the United States Constitution?

[fol. 655] 6. Where the legislature of the State of Hawaii has constructed senatorial districts with substantial equality of population for each district in accord with the number of senators to be elected from the respective senatorial district, was it necessary for the legislature to have considered ethnic, political, industrial, economic, social, occupational factors, and community of interests and problems in the formation of such districts, in order to comport with the requirements of the Equal Protection Clause of the 14th Amendment of the Constitution of the United States?

7. Does the fact that the geographical boundaries of certain districts of one house of a bicameral legislature of the State of Hawaii are identical to, or coincide to a great degree with, the geographical boundaries of certain districts of the other house violate the Equal Protection Clause of the 14th Amendment to the Constitution of the United States?

8. Does the weight of the votes of the citizens in districts, where the geographical boundaries for both senatorial and representative districts are identical or coincide to a great degree, far exceed the weight of votes of citizens in districts where the geographical boundaries for senatorial and representative districts do not coincide, so that there is a violation of the Equal Protection Clause of the 14th Amendment of the Constitution of the United States?

9. Whether the Equal Protection Clause requires that no later than at the 1966 general election, amendments to the Hawaii Constitution providing for a permanent reapportionment plan shall be submitted to the electorate for ratification?

[fol. 656] 10. Where certain provisions of the Hawaii Constitution relating to the apportionment of the Hawaii Senate are invalid, does the legislature of the State of Hawaii have the authority to enact at least provisional reapportionment legislation relating to the Hawaii Senate, pending the adoption of valid amendments to the Hawaii Constitution providing for the reapportionment of the Hawaii Senate in accord with the United States Constitution?

Dated: Honolulu, Hawaii, May 7, 1965.

James T. Funaki, Attorney for Elmer F. Cravalho, et al., House of Representatives, Iolani Palace Grounds, Honolulu, Hawaii.

[fol. 657] Proof of Service (omitted in printing).

[fol. 666]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

Civil No. 2308

HENRIETTA DAVIDSON HOLT, et al., Plaintiffs,

vs.

WILLIAM S. RICHARDSON, Lieutenant Governor of Hawaii, Defendant,

JOHN J. HULTEN, *et al.*, and JOHN A. BURNS, Governor of Hawaii, Intervenors-Plaintiffs,

NELSON K. DOI, *et al.*, and ELMER F. CRAVALHO, et al., Intervenors-Defendants.

RULING ON MOTION TO SUSPEND INJUNCTION AND FOR STAY OF ORDER PENDING APPEAL—May 11, 1965

This court has before it the motion of the Honorable John A. Burns, Governor of Hawaii, one of the intervenor-plaintiffs herein, that this court suspend the injunction heretofore entered against all members of the legislature, intervenor parties herein, and stay this court's order of April 28, 1965, pending the hearing and determination of the appeal of the Honorable John A. Burns to the Supreme Court of the United States from the orders of this court of April 9, 1965, and April 28, 1965. Honorable William S. Richardson, Lieutenant Governor of Hawaii and defendant herein, and Henrietta Davidson Holt, et al., plaintiffs herein, have also joined in the motion.

After full consideration of the affidavit of the Honorable John A. Burns as well as the record in this case, the motion is Denied.

[fol. 667] Dated: Honolulu, Hawaii, this 11th day of May, 1965.

Gilbert H. Jertberg, Circuit Judge, William T. Beeks, District Judge, Martin Pence, District Judge.

[File endorsement omitted]

[fol. 668]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

DOCKET ENTRIES

Civil Docket 2,308

TITLE OF CASE

HENRIETTA DAVIDSON HOLT, et al., Plaintiffs

vs.

WILLIAM S. RICHARDSON, Lt. Gov. of Hawaii, Defendant,

JOHN J. HULTEN, et al.,
Applicants for Intervention as Pltfs.

JOHN A. BURNS, Governor of Hawaii,
Applicant for Intervention as Pltf.

NELSON K. DOI, et al.,
Applicants for Intervention as Defts.

ELMER F. CRAVALHO, et al.,
Applicants for Intervention as Defts.

Basis of action: Federal Declaratory Judgment Act, 28 USC, §§2201, 2202; Reapportionment of Legislature, Hawaii.

ATTORNEYS

For Plaintiff: Charles M. Tonaki, Barry J. Rubin, Macaji Marumoto, Associate.

Intervenors Hulten, et al.; Bert Kobayashi, AG; Bertram T. Kanbara; Nobuki Kamida.

Intervenor Burns: Bert T. Kobayashi, AG.

For Defendant: Robert G. Dodge.

Intervenors Doi, et al.: Frank D. Padget 3/10/65.

Intervenors Cravalho, et al.: James Funaki.

3rd Legislature: Robert Kimura.

[fol. 669]

DATE	FILINGS—PROCEEDINGS
1964	
Aug. 13	COMPLAINT, SUMMONS, MOTION FOR PRELIMINARY INJUNCTION, AFFIDAVIT OF CARL J. GUNTERT and MEMORANDUM OF AUTHORITIES filed
	SUMMONS issued, certifying one copy for service
	ORDER FOR HEARING ON PRELIMINARY INJUNCTION filed
	U. S. Marshal's return filed—served
17	Notice of Motion to Intervene, Motion to Intervene as Plaintiffs, Complaint and Statement of Reasons and Authorities filed (Hulten and Okano)
18	Amendment to Exhibit B filed Certificate of Service filed
21	Answer filed

DATE 1964	FILINGS—PROCEEDINGS
Aug. 24	Notice of Motion to Intervene, Motion to Intervene as Plaintiff, Complaint in Intervention, and Statement of Reasons and Authorities filed (Burns)
	Application to Fix Time for Hearing, Motion to Intervene as Defendants, and Notice of Motion filed (Doi, et al.)
	Answer and Cross-Claim filed (Doi, et al.)
	Certificate of Service filed
	Notice of Motion to Intervene, Motion to Intervene, Answer, and Statement of Reasons and Authorities filed (Cravalho, et al.)
	Entering proceedings—no objections to Motions to Intervene by plaintiffs and defendant—motions to intervene granted—plaintiff's documents 1, 2, 2-A, 2-B, 2-C, 3 and 4, defendant's document A, Intervenor defendant's documents S-1, S-2, S-3 & S-4 marked for identification—Governor's document GO-1 and House documents H-1 and H-2 submitted for identification—statements by respective counsel—plaintiff ordered to submit Pretrial Order
25	Entering proceedings—motion to intervene by George Ariyoshi, et al. granted—plaintiff's wits: Robert Schmitt, Frank Takao and Robert Chang—plaintiff's exhibits 1, 2, 2-A, 2-B, 3 & 4 admitted in evidence—defendant's A admitted in evidence—case continued to 2:00 p.m. this day for further hearing—oral motion by Robert G. Dodge for denial of motion for preliminary injunction joined by Frank Padgett—case continued until 3:18 p.m.—argu-

DATE 1964	FILINGS—PROCEEDINGS
Aug. 25 (cont'd)	ment by Bertram T. Kanbara on behalf of Preliminary Injunction—argument by Dodge and Marumoto
26	Entering proceedings—Robert Schmitt recalled to testify—plaintiff's exhibits 5, 6, 6-A, 6-B, 6-C, 7, 8, 9, 10 and 11, Governor's exhibits 1 and 2, and Intervenor's S-1, S-2, S-3 and S-4 were admitted in evidence—argument on motion to dismiss motion for preliminary injunction by Rubin, Marumoto, Dodge and Padgett —case continued to 2:00 p.m. for preliminary injunction denied—trial date set for 1/11/65 —simultaneous briefs due 11/17/64—Reply to Simultaneous Briefs due 12/1/64 at 4:00 p.m.
Nov. 17	Brief on Behalf of Intervenors-Defendants Nelson K. Doi, et al. filed
	Brief of Intervenors-Defendants Elmer F. Cravalho, et al., filed
	Plaintiffs' Opening Brief filed
	Defendant's Brief filed
	Opening Brief filed (Int.-Pltfs. Hulten, et al.)
	Certificate of Service filed
Dec. 1	Reply Brief of Intervenors-Defendants Elmer F. Cravalho, et al. filed
[fol. 670]	
	Answering Brief filed—Attorney General
	Plaintiff's Answering Brief filed
	Answering Brief on Behalf of Intervenors-Defendants Nelson K. Doi, et al., filed

DATE	FILINGS—PROCEEDINGS
1964	
Dec. 2	Addendum to Intervenors-Plaintiff's Answering Brief filed—AG
1965	
Jan. 11	Entering proceedings at trial—Patsy Mink withdrawn as Intervenor-Plaintiff and Thomas S. Ogata withdrawn as Intervenor-Defendant—plaintiff's exhibits 12-18 marked and admitted as evidence—plaintiff's witnesses Robert C. Schmitt, Mr. Frank Takao—defendant's witness: Eileen K. Lota—Defendant's exhibits B&C, H-1 admitted—argument by Masaji Marumoto—case continued to 1/12/65 at 1:30 p.m.
	PRETRIAL ORDER filed
12	Entering proceedings—argument by respective counsel—case continued to 1/13/65 at 9:00 a.m.
13	Entering proceedings at further argument—closing statements by counsel—counsel to singly or collectively submit a suggested form of decree—forms due 1/20/65
18	Reporter's Partial Transcript of Proceedings filed
19	Defendant's Proposed Form of Decree filed
	Defendant's Memorandum Re Proposed Decree filed
20	Proposed Decree filed—plaintiffs
	Proposed Form of Decree of Intervenors-Defendants Elmer F. Cravalho, et al. filed
	Proposed Decree of Intervenors-Defendants Nelson K. Doi et al., filed

DATE 1965	FILINGS—PROCEEDINGS
Jan. 20 (cont'd)	Suggested form of Decree filed—Hulten, et al. and Burns
26	Substitution of Parties filed
Feb. 17	DECISION AND ORDER filed JERTBERG, BEEKS, PENCE
Mar. 1	Appearance of Counsel filed
	Notice of Motion to Alter or Amend Judgment, Motion to Alter or Amend Judgment and Statement of Reasons and Authorities filed
5	Defendant's Memorandum filed—Richardson
	Motion to Amend Motion to Alter or Amend Judgment and Order filed—Intervenors-Defendants
	Memorandum in Support of Motion to Alter or Amend Judgment filed—AG
	Memorandum of Plaintiffs Position on Motion to Alter or Amend Judgment filed
	Appearance of Counsel—Kimura, et al. for Third Legislature filed
	Brief of Intervenors-Defendants Elmer F. Cravalho, et al. and Intervenors-Defendants Nelson K. Doi, et al., filed
9	Entering proceedings—hearing on motion to alter and amend Judgment—Order granting the motion read and filed
	Minute Order on Motion to Alter or Amend Judgment filed

DATE 1965	FILINGS—PROCEEDINGS
Mar. 10	Withdrawal of Counsel filed—Padgett
19	Final Order on Motion to Alter or Amend Judgment filed
[fol. 671]	
Mar. 24	Memorandum of Plaintiffs' Position on Senate Reapportionment Under H.B. 773 and H.B. 987 filed
	Defendant's Memorandum on H.B. 773 and H.B. 987 filed
	Memorandum of Governors Position on Senate Reapportionment Under House Bill No. 773 and Senate Draft 1 filed
	Concurrence in Brief of Attorney General filed
	Brief of Intervenors-Defendants Elmer F. Cravalho, et al., and Intervenors-Defendants Nelson K. Doi, et al., filed
25	Addendum to Governor's Memorandum filed
Apr. 2	Motion to Alter or Amend Order of March 9, 1965 and Order filed
9	DECISION AND ORDER filed in this action on February 17, 1965 (1) declaring those provisions of Article III, Section 2 of the Constitution of the State of Hawaii fixing the number of senators per senatorial district unconstitutional and invalid, the remainder of said Article III constitutional and valid; (2) declaring the proviso at the end of sixth paragraph, Sec. 2, Article XV of said Constitution pertaining to amendments affecting representation in the Senate unconstitutional and invalid, the remainder of said Article XV, constitu-

Apr. 9 (cont'd) tional and valid; (3) denying plaintiffs' claim that the apportionment of the House of Representatives of the Legislature of Hawaii has caused discrimination; (4) enjoining the Third State Legislature in regular session from taking final action upon any legislation, except such actions as are necessary to organize the respective houses at such session and appropriate funds for the session, until legislation, pursuant to the provision of Article XV of said Constitution providing for the submission to the people of Hawaii, by special election to be held not later than August 1, 1965, the question: "Shall there be a convention to propose a revision of or amendments to the Constitution?", and for any and all acts required by law to implement such legislation, has been enacted into law, that legislation shall also provide a special election if the vote be in the affirmative that a special election shall be held not later than September 15, 1965, that the convention convene not later than October 15, 1965 and conclude its deliberation in time to submit its proposed constitutional amendments to the electorate of Hawaii at a special election to be held not later than January 30, 1966, including provisions therein for reapportioning the Senate of Hawaii on a constitutionally valid basis (5) declaring the officers of all senators of the Hawaii Senate vacant as of the day of the general election of 1966, the existing offices of all senators valid until such election date of 1966, (6) retaining jurisdiction of this action by the Court for all purposes, including (a) considering appropriate

DATE
1965 FILINGS—PROCEEDINGS

Apr. 9 (cont'd) sanctions if the orders of court are not carried out (b) judicially reapportioning the Senate in the event the electors of Hawaii reject a constitutional convention, or the Convention fails to propose an amendment reapportioning the Senate, or the electors reject such an amendment, or if any amendment of the convention does not insure the apportionment of the Hawaii State Legislature in accordance with the requirements of the Equal Protection Clause of the 14th Amendment to the Constitution of the United States; (7) denying all other relief prayed for in the Complaint, Com-

[fol. 672]

plaint in Intervention and Cross Complaint, entered this 9th day of April 1965

14 Submission of Proposed Constitutional Amendments Adopted and Legislation Enacted Pursuant to Minute Order Dated March 9, 1965, as Amended filed

15 Entering proceedings—reapportionment—Senate Exhibits S-5 thru S-8 and Government Exhibit GO-4 marked and entered as evidence—Senate Witnesses: Sakae Takahashi and Robert C. Schmitt—case continued to April 16, 1965 at 9:00 a.m.

16 Entering proceedings—argument—case taken under advisement

19 ORDER STAYING INJUNCTION filed

28 DECISION AND ORDER ON HAWAII'S SENATE REAPPORTIONMENT PLAN OF APRIL 14, 1965 filed

DATE 1965	FILINGS—PROCEEDINGS
Apr. 28 (cont'd)	JERTBERG, BEEKS, PENCE
	The Decision and Order on Hawaii's Reapportionment plan of April 14, 1965 filed on this day ordering the stay order of this Court dated April 19, 1965 rescinded, effective forthwith; reinstating automatically and forthwith the Decision and Order of this court dated February 17, 1965, said Decision and Order to continue in full force and effect until the further order of this court; retaining jurisdiction of this action by the court for all purposes; ordering this decision effective forthwith, entered this 28th day of April, 1965.
30	Withdrawal of Counsel filed (Bert T. Kobayashi—AG)
May 3	Motion to Intervene as Plaintiff, Statement of Reasons and Citations of Authorities in Support of Motion to Intervene as Plaintiff and Certificate of Service filed
	Withdrawal of Counsel filed (James T. Funaki)
	Appearance of Counsel filed (Funaki for Okano)
	Notice of Appeal to the Supreme Court of the United States and Proof of Service filed (Governor Burns)
7	Motion to Suspend Injunction and for Stay of Order Pending Appeal, Affidavit of John A. Burns, Application to Fix Time for Hearing, Notice of Motion and Certificate of Service filed
	Withdrawal of Counsel filed (James Funaki for House)

DATE 1965	FILINGS—PROCEEDINGS
May 7 (cont'd)	Notice of Appeal to the Supreme Court of the United States filed (Hawaii State Senators)
	Notice of Appeal to the Supreme Court of the United States and Proof of Service filed (Elmer F. Cravalho, et al.)
10	Concurrence in Motion to Suspend Injunction and for Stay of Order Pending Appeal filed
	Defendant's Joinder in Motion for Stay filed
11	Ruling on Motion to Suspend Injunction and for Stay of Order Pending Appeal filed
	JERTBERG, BEEKS, PENCE
10	Entering Order—hearing on motion to suspend the Injunction continued until moved on by order of the Court
24	Certified copy of order signed on 5/21/65 by Mrs. Justice Douglas filed

[fol. 682] Certificate of Clerk (omitted in printing).

[fol. 686]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

Civil No. 2308

HENRIETTA DAVIDSON HOLT, et al., Plaintiffs,

vs.

WILLIAM S. RICHARDSON, Lieutenant Governor of Hawaii, Defendant;

JOHN J. HULTEN and GEORGE M. OKANO, Members of the Legislature of the State of Hawaii, and JOHN A. BURNS, Governor of Hawaii, Intervenors-Plaintiffs;

NELSON K. DOI, et al. (Senators, Second Legislature, State of Hawaii), Intervenors-Defendants;

ELMER F. CRAVALHO, et al. (Representatives, Second Legislature, State of Hawaii), Intervenors-Defendants.

Excerpts from Transcript of Proceedings—August 25 and 26, 1964

* * * * * * *

[fol. 687] ROBERT SCHMITT, a witness called by the Plaintiffs, being duly sworn, testified as follows:

Direct examination.

By Mr. Tonaki:

Q. Would you state your name and address, please?

A. I am Robert Schmitt. My address is 2319 Ala Wai [fol. 688] Boulevard, Honolulu.

Q. By whom are you employed?

A. The State of Hawaii, Department of Planning and Economic Development.

Q. What is your position with the State of Hawaii?

A. My title is statistician, State statistician.

Q. For how long have you been employed by the State of Hawaii?

A. By the State since April 1958.

Q. Have you been in statistical work all that time?

A. Yes, I have.

Q. Will you briefly state your educational background relative to your job as statistician?

A. I have a Bachelor's and Master's Degree from the University of Cincinnati, and additional graduate work from the University of Hawaii, Michigan and University of Washington, with a good deal of course work in statistical and research methods.

Q. Do you belong to any organization of professional statisticians?

A. Yes, I belong to the American Statistical Association. I am immediate past president of the Hawaii Chapter of the American Statistical Association, and I am a member of the Population Association of America.

Q. Have you written any professional articles?

[fol. 689] A. Approximately 60 articles in professional journals.

Q. Will you state your experience as a statistician previous to your employment by the State of Hawaii?

A. I was Redevelopment Research Analyst in charge of the Research Division of the Honolulu Redevelopment Agency for four years. I worked for several years for the Chamber of Commerce of Honolulu as research statistician. I have also been employed by the local consulting firm of John Childs and Company for several years. And previous to that, I was in charge of research for the Seattle City Planning Commission.

Q. Will you describe your duties as State statistician?

A. I am in charge of the statistical programs of the Department of Planning and Economic Development, and

have been asked by the Governor to coordinate all statistical activities of the State of Hawaii and to develop a statewide statistical reporting system.

I am author and editor of the Statistical Abstracts of Hawaii, which is intended to be periodically revised and updated. And also, I am in charge of reviewing and making recommendations regarding statistical programs of all other State agencies.

Q. What is your relationship as statistician through the United States Bureau of Census?

A. I have the title bestowed by the Bureau of the Census of census tract key person for Honolulu. In each major [fol. 690] metropolitan area of the nation, the Census Bureau designates one person not in Federal service to be their chief contact as liaison and source of information regarding small area statistics in the community. And I have had this position for some years.

Mr. Tonaki: Your Honor, at this time I would like to say to the Court that I have received a stipulation for all Counsel for the introduction of Plaintiff's Exhibit 1 into evidence, a stipulation.

Judge Pence: There being no objection, Plaintiff's Exhibit No. 1 for identification is received in evidence as Plaintiff's Exhibit No. 1. May we have again the title of that exhibit?

Mr. Tonaki: The title is "Tabulation of Registered Voters in Population."

(The document referred to was received in evidence as Plaintiff's Exhibit No. 1.)

By Mr. Tonaki:

Q. Mr. Schmitt, I will now hand you Plaintiff's Exhibit No. 1.

Judge Pence: You will furnish that for us also?

Mr. Tonaki: There are copies there.

Judge Pence: Have we already received that? Is it already in our file?

Mr. Tonaki: I believe so. If not, there are sufficient copies there. It is a one-page exhibit.

[fol. 691] Judge Pence: Is it attached as an exhibit to your complaint? Is this particular exhibit attached?

Mr. Tonaki: No.

Judge Pence: Then we don't have it.

Judge Bowen: I don't have it.

(Documents handed to the Court.)

By Mr. Tonaki:

Q. Mr. Schmitt, are you familiar with this document marked as Exhibit 1?

A. Yes, I am.

Q. Did you prepare this document?

A. Yes, together with the assistance of my staff.

Q. Where did you obtain the figures on population?

A. The 1960 census, the bulletins on the number of inhabitants and the distribution by census tract.

Q. Where did you obtain the figures on registered voters?

A. From the office of the Lieutenant Governor.

Q. To the best of your knowledge, are those figures accurate?

A. Yes, sir, they are.

Q. On the right-hand side of Exhibit 1, there are three columns showing apportionment figures used in the 1960 population, 1960 registered voters and 1962 registered voters based on the method of equal proportions. Did you compute the figures using the method just named?

[fol. 692] A. Yes, I did.

Q. Will you briefly explain what the method of equal proportions is?

A. The method of equal proportions is a technique generally in use to apportion legislative bodies. It has been very extensively analyzed by leading professional bodies

throughout the nation and is recommended as the means for apportioning legislative bodies. The mathematics of the method are fairly complex and would be quite time-consuming to describe in detail. However, I can refer you to an official Senate document of the 1940 U. S. Congress which describes this in considerable detail.

Mr. Tonaki: No further questions, your Honor.

Judge Pence: Mr. Dodge?

Mr. Dodge: I have previously given to other Counsel copies of Defendant's Exhibit A. I have copies available for the Court, copies for each.

Judge Pence: You are now offering Defendant's Exhibit A into evidence?

Mr. Dodge: Yes, I do.

Judge Pence: Is there any objection, as far as you know?

Mr. Dodge: There is no objection.

Judge Pence: No objection? Defendant's Exhibit A for identification is received in evidence as Defendant's Ex-
[fol. 693] hibit A.

(The document referred to was received in evidence as Defendant's Exhibit A.)

Judge Pence: And will you state the title of that exhibit for our edification?

Mr. Dodge: It is the written testimony of Mr. Schmitt given before the State Senate on July 24, 1964.

Judge Pence: The testimony of this same witness?

Mr. Dodge: Same witness.

Judge Jertberg: May I inquire, is this part of cross-examination of this witness or is this on behalf of your own case?

Mr. Dodge: Well, all I wanted to do is establish if he did this, and I haven't any questions on cross-examination, any further questions.

Cross examination.

By Mr. Dodge:

Q. Showing you Defendant's Exhibit A, did you prepare that, Mr. Schmitt?

A. Yes, I did.

Q. And the same sources that you spoke of as far as Plaintiff's Exhibit 1 were used in your compilation of those figures?

A. Together with certain additional material from the Bureau of the Census and other sources necessary to com- [fol. 694] plete the narrative of this.

Mr. Dodge: I have no further cross-examination at this time.

Judge Pence: Inasmuch as your position, Mr. Kobayashi, is, I think, similar to that of Mr. Tonaki, do you have any questions that you wish to ask at this time, or should I address you, Mr. Kanbara?

Mr. Kanbara: We have no questions.

Judge Pence: Mr. Padgett?

Mr. Padgett: I have a question.

Cross examination.

By Mr. Padgett:

Q. Mr. Schmitt, what do you mean by your statement that the method of equal proportions is recommended by a means of apportioning legislative bodies?

Judge Jertberg: Where does that statement appear on the exhibit?

Mr. Padgett: Your Honor, that was in his direct testimony that he made that statement.

A. The method of equal proportions was first described in 1920, I believe, by Mr. Huntington, who was a Professor of Mathematics in Harvard. It was subsequently considered by several professional bodies, including an of-

ficial advisory group to the Bureau of the Census. And if I may refer to my notes on this, it was recommended by [fol. 695] the advisory committee to the Director of the Census in 1921, and in the National Academy of Sciences in 1929.

Q. What were the terms of the recommendation?

A. They had reviewed the method and also several alternate methods and found that this was the best technique for apportionment for allocating fractional representation, so that certain anomalous situations brought about by the use of alternate techniques would not occur. For example, under certain of the previously-used methods, there had been the possibility that an area gaining in population might actually lose in its number of seats in a constant size body when all other areas remained constant. There were several other peculiar developments that might occur, using these alternate techniques. Now, just as a hypothetical example, if there were ten seats to be apportioned and there are three districts, one with thirty-three per cent of the population and another with thirty-three and a third or thirty-four, each would get three seats leaving one to be given to one of the three on some arbitrary method. The method of equal proportions would allocate that by the most suitable way so that the theory being that no other procedure would as well reduce the number of voters or population, whatever the basis per representative to his equal amount.

Q. So the recommendation is a recommendation based on its statistical validity?

[fol. 696] A. That's right.

Q. When you are dealing with numbers?

A. It was purely a mathematical technique of doing this most efficiently and meaningfully.

Q. There was no judgment based in that recommendation on the geographic, historical, economic, or other consideration that might enter into an apportionment?

A. None at all. This was done entirely with regard to the apportionment of the United States Congress.

Mr. Padgett: Thank you. I have no further questions.
Judge Pence: Mr. Funaki?
Mr. Funaki: I have no questions.

EXAMINATION BY THE COURT

Judge Jertberg: Mr. Schmitt, I notice Article III, Section 4 of the Constitution of the State of Hawaii contains in several places the phrase, by the method known as the "method of equal proportions."
The Witness: That's right.
Judge Jertberg: Now, what information do you have as to the insertion of that phrase in the Constitution? Were you active in the preparation of this Constitution?
The Witness: No, sir, I was not. I assumed that it would be discussed in the proceedings of the Constitutional Convention.
Judge Jertberg: And is it your view that the method [fol. 697] mentioned in the Constitution is the same method of equal proportions which you discussed?
The Witness: There is only one method known. This was discussed not only in reference that I cited, the Senate document, but it was also described in the Brookings Institution Report at considerable length and in a number of reports subsequently issued. And I have never seen any other technique given to this title or this technique given any other title.
Judge Jertberg: Is the document, the Senate document, available? Do you have it?
The Witness: I do not have it. However, the Legislative Reference Bureau does have a copy and I understand it is their copy that I reviewed in preparing for this case.
Judge Jertberg: And, as I understand, that document goes into detail in explaining the operation of the method of equal proportions?
The Witness: That's right.
Judge Jertberg: Do any Counsel have the document available?

Mr. Dodge: We can get it, your Honor.

Judge Pence: This being the Plaintiff's case, we will ask that the Plaintiff supply the Court with a copy for reference. We may not be able to have a copy for our own personal use but it should be available. Mr. Tonaki, you [fol. 698] will supply it?

Mr. Tonaki: May I ask what document the Court is referring to?

Judge Pence: Do you have it there?

The Witness: I have a verifax copy of the part that is pertinent to what we are discussing, and also Brookings Institution 1941 Report, Congressional by Schmeckbier.

Judge Pence: Mr. Tonaki, will you secure copies for the record as well as for each individual Judge, copies of these two reports which the witness just mentioned and shown us the reproductions?

Mr. Tonaki: Your Honor, my associate, Judge Marumoto just informed me that he has heard about a document by our Legislative Bureau, probably in 1958, Number 2 which touches on this subject also. If the Court would like to have us dig that up, if possible, we can do that.

Judge Pence: You will offer them at a later date as exhibits for the Plaintiff?

Mr. Tonaki: Yes, your Honor.

Judge Pence: Next in order. Mr. Padgett, you were on your feet for a moment.

Mr. Padgett: I was about to say that when these documents are made available, perhaps various Counsel would have further questions of Mr. Schmitt.

Judge Pence: Your right is reserved for further ques- [fol. 699] tions based upon the documents. Mr. Schmitt, referring to Exhibit No. 1, you have only broken it down in your exhibit here, your figures, into two categories. I take it that your 1960 population is your gross population?

The Witness: That's right.

Judge Pence: For the information of the Court, will you state what goes into the making up of the gross population? In other words, children, aliens, what military personnel, if any, and so forth.

The Witness: Yes, sir. The 1960 Census definition of population used in its compilation, the 1960 Census data, included all persons whose normal place of residence was in the State of Hawaii. Now, in the case of certain rather unusual groups, less commonly found groups, a certain modification to this definition was necessary. In the case of the armed forces, for example, it included all armed forces stationed ashore in Hawaii, regardless of their legal or voting residence. It included all men aboard ships in Hawaii ports on the census date, which was April 1st, 1960; that is, a ship tied up in Kapalama Basin or in Pearl Harbor, Ford Island, the entire crew of that ship was assigned to that geographic area.

This was also true in the case of civilian ships. For example, the Ala Wai Yacht Harbor included a number of house boats and yachts which were enumerated in Hawaii.

[fol. 700] Judge Pence: Presupposing on that day the Matsonia had been in port,—this is just hypothetical—would all of the crew of the Matsonia have been included?

The Witness: Yes, the crew would have been, but not necessarily the persons, the passengers aboard the Matsonia.

Judge Pence: Presupposing the Royal Hawaiian or the Reef or the Halekulani, the Princess Kaiulani or any of the rest have been full of persons residing one day, one week, one month on that particular day, what, if anything, is reflected in this gross figure of the 1960 population, referring to those individuals?

The Witness: If the person on the night preceding the census had been there, on the so-called H-night, each hotel or transient accommodation was enumerated; every person in these accommodations was listed and given census schedule, asked questions of all persons in the census.

Judge Bowen: In other words, on the day the census was taken, on the day the population was counted, every human being on the face of the earth within the territorial limits was counted, is that right?

The Witness: No, they enumerated every person in Hawaii at that time, but they then reallocated them to

their home states, any persons caught on this H-night survey who said their place of usual residence was elsewhere—for example, a tourist staying at one of the Wai- [fol. 701] kiki hotels would have been asked, is this your usual place of residence? And if he answered, "No, I am from California," they would then ask the questions of him but send his census response back to California to the District Supervisor's office of the Bureau of the Census to be entered in California. If a member of his family who had not come on vacation and had answered for him in California,—and this happened most of the time—they would then match the two replies and the cards as one of them.

Judge Bowen: Was it some sort of a formula that was applied by which the possibility of such person being included in the number enumerated was deducted?

The Witness: Well, supposedly he would have been caught in either place, as he should have been caught in Hawaii—

Judge Bowen: Do you have some sort of a formula?

The Witness: There was no formula. We don't know how many were here at that time. But we made an estimate based on the Hawaii Visitors Bureau statistics which would indicate that no more than 10,000 were here on April 1st, 1960. Those would have been reallocated to the mainland, or if they were foreigners, say, visiting from Japan, they would have been disregarded in the census. The Census Bureau did not report how many such persons were reallocated. We had to rely on the Hawaii Visitors Bureau statistics. As you know, each person entering the State is given a form by the Department of Agriculture, [fol. 702] and the Hawaii Visitors Bureau uses this information to obtain such things as whether the man is a resident of Hawaii or an intended visitor; if he is a visitor, what State he comes from, and so forth.

Judge Bowen: In this information you give us, is it true or not true that there is no certainty about how many of those people were reallocated?

The Witness: There is no certainty how many were reallocated. We assume that all of them were.

Judge Bowen: My question is, there is no way by which you can let us tell how many there were of them so as to give or not give any account or to give their numbers, to count their numbers as being significant or insignificant?

The Witness: If I may refer to my notes—

Judge Bowen: Yes.

The Witness: —based on the best available information I have, the number of visitors present at the time of the 1960 U. S. Census who were caught here in the census but reallocated to the mainland before publication of the census results, was 7,912. There were 3,710 approximately Hawaii residents who were out of the State at the same time, who were caught on the mainland and reallocated back to Hawaii. I must underscore that this is an estimate based on other information.

Judge Pence: Would you say, then, that that is a reasonably accurate figure, is reasonably accurate, the method [fol. 703] used by the census, as reasonable as they could make it? Or would you say it is substantially accurate?

The Witness: I would say it is substantially accurate. This is not based on census information.

Judge Pence: It is based on what?

The Witness: On information provided by the Hawaii Visitors Bureau. You see, it is an editing procedure.

Judge Pence: You use the term "editing"? Who did the editing, the census or yourself?

The Witness: This was done by the whole census officials who, when they encountered such information, in return said that person was actually a resident of the mainland and sent the form back to the district from which he came.

Judge Jertberg: Mr. Schmitt, the figures on Exhibit 1 on registered voters relating to 1960 and 1962, those are accurate figures?

The Witness: Those were obtained from the office of the Lieutenant Governor, and I assume those are accurate,

barring some inadvertent typographical error which I certainly hope has not occurred here. This has been retyped several times.

Judge Jertberg: Is there any way by which one can determine from available statistics, the number included in the gross population who are qualified to register but failed to register?

[fol. 704] The Witness: I have made such an estimate based on the census and other information.

Judge Jertberg: For what years?

The Witness: For 1960 and then for 1964.

Judge Jertberg: Those figures that you just mentioned do not appear on Plaintiff's Exhibit No. 1?

The Witness: No, sir. These appeared in my testimony before the State Senate on July 24th. I believe a copy of that has been entered as evidence.

Judge Jertberg: That would be Defendant's Exhibit A, is that right, this document that I am handing you?

The Witness: Yes, sir.

Judge Jertberg: On what page do they appear?

The Witness: The 1960 estimate appears on page 6.

Judge Jertberg: That is Table 1, Voting Eligibility and Participation of the Population, 20 Years Old or More, 1960?

The Witness: That's right.

Judge Jertberg: And upon what sources was that table appearing on page 6 of Defendant's Exhibit A obtained?

The Witness: The population, 20 years and over, was based on the 1960 Census count. The number registered was based on the Lieutenant Governor's information for November of that year. Now, here we are comparing April, 1960, eligibility in November of 1960 registration. There was no [fol. 705] way to adjust that. The not-registered was a residual figure between the registered and the eligible to register. And the eligible to register in turn was the residual figure between the population of twenty and over and not eligible to register. The eligible to register I ob-

tained from a number of sources, from those not United States citizens, based on the annual alien address reports of the United States Department of Justice.

The residents under one year was based on samples, on sample studies undertaken by the Hawaii Newspaper Agency, Incorporated.

As a sample, 2,500 on Oahu households and 900 Big Island households which gave the turnover in population and the residents of one year earlier population living in households.

The population in institutions was based on information obtained from the Department, what was then the Department of Institutions, since a part of the Department of Health and the Department of Social Agencies.

The military personnel was based on reports from the local commanding officer, who, as of April 1, 1960, gave us both the number of members in the Armed Forces in each branch of the service, their island, the island where he was stationed, and the age and sex distribution. This was given both to the Armed Forces and to the dependents separately. [fol. 706] So that from these sources, I was able to arrive at an estimate of the number of persons not eligible to register. And by subtracting that from the number of twenty and over, obtained the number eligible to register.

Judge Bowen: Which number was what?

The Witness: Well, the number of eligible to register was 231,914.

Judge Bowen: That was the number not eligible?

The Witness: No, the number not eligible was 128,279, not eligible to register. The number eligible was 231,914.

Judge Pence: If I understand you correctly, the registration figures, that is, not eligible to register because of residence under one year, that that figure is, you feel in your opinion, substantially accurate?

The Witness: That is probably the weakest of all the statistics in here, because at a later date, using information such that became available, I made an estimate of January

1, 1964, and there was a greater change in that than would be indicated by the change in population or any other factors. It was actually a profit in technology, and my 1964 estimate was 12,008 as against 8,529 in 1960. If I were doing this 1960 table over again, I would adjust that residence under one year upwards somewhat to perhaps 11,000 as a guess. But the statistics on which I made my 1964 estimate were not available at the time in 1960.

[fol. 707] Judge Bowen: Do I correctly understand you to say that of the 1960 enumeration the total military estimated to have been eligible for enumeration were 231,000?

The Witness: No, that was the total number of persons in the State eligible to register. Now, that excluded all members of the Armed Forces and all dependents. As you will see on page 7, which presents the January 1, 1964, estimate, I had a subnote saying that all military personnel and dependents are assumed to be registered in other states or otherwise ineligible. In October, 1962, military personnel and dependents who were twenty years of age or more, had one year or more residence in Hawaii and were living off Base, numbered 11,400, including 5,900 servicemen and 5,900 dependents. Now, because some of the Armed Forces stationed here are local residents, to exclude all of them was a rather arbitrary procedure. At the time I had no information on that. However, since then, certain information on eligibility of the Armed Forces has become available. For example, a sample survey made by the Honolulu Star-Bulletin in October, 1962, and published by the Honolulu Redevelopment Agency in July, 1963, indicated that 23,900 households headed by a member of the Armed Forces lived on Oahu. Now, most of the Armed Forces in the State, practically 99 per cent, are on Oahu.

Judge Pence: Ninety per cent?

The Witness: Ninety-nine per cent. An estimated 8.3 [fol. 708] per cent of these household heads were Hawaii-born, that is, of the household heads who are members of the Armed Forces on Oahu, 8.3 per cent were Hawaii-born.

71.5 per cent had lived in Hawaii at least one year and 11.4 per cent had lived here at least five years, and 6.7 per cent occupy their own homes.

Judge Pence: On what page is that?

The Witness: This appears, by the way, in the first paragraph of page 4 of my testimony before the State Senate.

Judge Pence: Of this Exhibit A? You said that if you were to take the 1960 population figures as set forth on Table 1 of Exhibit A and were to use new methods, new sources, I think, utilizing new sources made available after this compilation was made regarding the residence under one year, that you would increase this figure to some round figure of 11,000 persons?

The Witness: Yes, sir.

Judge Pence: And that, then, would result in, let's say, a swing of 2,500 persons?

The Witness: Approximately, yes.

Judge Pence: And where would that come from, your figures there in Table 1?

The Witness: This would result in an increase, of course, in the sub-total label not eligible to register and would then result in a decrease in the sub-total eligible to register, and the decrease would be in the not-registered component [fol. 709] which would drop from 29,855 to about 27,300 approximately.

Judge Pence: So the eligible to register, then, would decrease?

The Witness: That's right.

Judge Pence: By approximately 2,500?

The Witness: That's right.

Judge Pence: Now, in determining the not-eligible to register, you have taken simply the figures of those twenty years of age and over and eliminated aliens, those residents who are not qualified under the one-year residence clause?

The Witness: That's right.

Judge Pence: And when you go into the matter of institutions, every person in an institution is an alien?

The Witness: No.

Judge Pence: A citizen?

The Witness: Let me clarify that. When I say institutions here, strictly speaking this is a population twenty and over in two types of institutions—three types actually—State Hospital or mental patients, Waimanu Home for the feeble-minded and Oahu Prison and the prisons on the other islands, and the one in Hilo, and also the Honolulu Jail prisoners at that time. And only of those twenty and over are estimated to be citizens. This involved an element of estimate. It was necessary to make these estimates to avoid [fol. 710] double counting. Now, the words of the State Constitution, I realize, do not put it in quite these terms. They say a person convicted of a felony and not pardoned and a person who is non compos mentis, the best approximation of that I could get for practical purposes was the number of patients at that time in the homes for the feeble-minded and State Hospital and in jail and in prison.

Judge Pence: And would you have an opinion as to what you would feel would be the maximum margin of error in your estimate, error or what could be by tremendous effort possibly develop. What would be your own estimate of the margin of error there?

The Witness: Well, beginning with those least likely to produce error, I would say that the information on Armed Forces and dependents would be extremely close and there would not be an error of more than a fraction of a per cent there. The number in institutions is a relatively small number so that the percentage, the number of persons involved would be quite small.

Judge Pence: So in the over-all picture it would also be, then, your opinion that it would be only a very small fraction, a small fraction of one per cent?

The Witness: I would say that the chief one—

Judge Pence: I am talking about institutions.

The Witness: Yes, relative to the number of persons [fol. 711] involved, it would be quite small. Residents under one year, as I mentioned, was the weakest in this 1960 esti-

mate. Using the most recent information available, as I told you, it increased the number rather sizeably relative to the number originally estimated. However, the number of persons in absolute terms involved is not too great.

Judge Pence: That figure you estimate would be 2,500 plus or minus?

The Witness: That's right. I would say that would be 2,500. And the probable amount of error in the 1960 estimate thus corrected would not exceed 1,000 persons. The number of aliens appears to be a very carefully compiled figure from the United States Department of Justice, Immigration and Naturalization Service. I suppose there are a certain number of wet-backs, so to speak, in Hawaii who are here illegally, since they didn't admit their alien status as aliens to the Bureau.

There are surprising statistics on this. For example, there are 4,500 persons from the Trust Territory of the Pacific in Hawaii. This seems like a sizeable number to the 85,000 who are still living there. I suggest a tremendous out-migration of the Trust Territory out here. Or perhaps some other people from the Pacific who would be considered in a different status and indicate their residence as Trust Territory. That I don't know.

[fol. 712] Judge Bowen: Do you want to state as to the future possibility as to migrants, future migrants to Hawaii?

The Witness: Well, we made only estimates for the 1960 Census and the 1964 date. The projections would be quite difficult to obtain.

Judge Pence: Insofar as the figure on the Trust Territory—

The Witness: This information from the census report is on place of birth. And I notice that a somewhat smaller figure appears in the information which I use as a source for this, not United States citizens, and it is the Department of Justice data. The difference is either a more accurate count or perhaps some of those Trust Territory people have

obtained citizenship. The 4,500 that I quoted was a census count on the place of birth. On the accuracy of the remaining statistics, the registration data are presumably quite accurate, although even the official statistics on elections are, as you know, subject to error, as witness the recount of the 1960 presidential election in Hawaii which put Hawaii into the Democratic column rather than the Republican as first thought. I believe Mr. Dodge is acquainted with that.

The final figure was the twenty years and over count on the census. And this, of course, brings up the question of the reliability of a census count. There have been some estimates made and published in the most recent issue of the [fol. 713] Journal of the American Statistical Association of this matter. The estimates published by the American Statistical Association bear only on the native white population. However, because of our unique situation in Hawaii, it is likely that the foreign-born and nonwhite population is more accurately enumerated here than the native Hawaiian, which, of course, is the opposite of the situation on the mainland where the foreign-born and nonwhite tend to be more mobile, to be located in areas more inaccessible or threatening to confuse the enumerators and, as a result, more likely to be enumerated—and if you would like, I can give you the data from this article on the Statistical Journal—

Judge Pence: It is not specifically applicable to our local problem, is it, in connection with the figures used on page 6 of Exhibit A, one year and over figure?

The Witness: It would probably give a maximum amount of error to be expected in the census count.

Judge Pence: In your opinion, what would be the maximum amount of error, then, in that figure of twenty years and over based on this report which you refer to?

The Witness: Based on national statistics, it would probably run—it is given nationally separately, male from female—2.2 per cent net census under-count for male, and 0.8 per cent net census under-count for female. So the aver-

age of that would be one and a half per cent which would [fol. 714] be, I would say, a maximum amount of error likely to be encountered. That is, if Hawaii followed the national pattern, this figure would be probably one and a half per cent under the actual number of persons resident in the State at that time.

Judge Pence: Is this method which you have used in arriving at what you testify substantially correct analysis of the voting eligibility and participation of the population twenty years or more, and in order to prepare this, does it take an abnormal gross and tremendous amount of time and effort to make it very difficult to do, say, every ten years?

The Witness: This probably took me about, oh, I would say 40 hours of my spare time to prepare when I did it for the University for the Social Research Laboratory several years ago.

Judge Pence: Do Counsel have any questions? Mr. Tonaki?

Mr. Tonaki: No questions.

Judge Pence: Mr. Dodge?

Mr. Dodge: I have some questions based on the Court's questions.

By Mr. Dodge:

Q. Mr. Schmitt, all of these figures based on the 1960 Census, this is your starting point?

A. That's right.

Q. Are those figures available within the geographic [fol. 715] boundaries of the election district or precinct?

A. You mean with reference to those who are eligible or not eligible, the total population—

Q. The total population figures.

A. Total population, yes. We have total population for the State, each county, each one, not strictly speaking each representative district because the district lines sometimes cross statistical matters. However, the State is divided, in the case of Oahu, there are 113 census tracts. The census

tract is a smaller published unit for large areas for statistical information for the census. And there are 37 county divisions. In addition, block statistics are published as part of the census of housing and simultaneously with the census of the population, for Honolulu City, Hilo City, Wailuku, and Lahaina.

Q. Isn't it true, though, Mr. Schmitt, that it is rather rare when the census tract coincides with the precinct in an election district?

A. Very true. There seems to have been an unfortunate disregard of precinct boundaries and representative district boundaries in laying out the census tracts, and vice versa.

Q. May I ask you this: You have been referring to an alien population, a sizeable number. Is that figure available to you in any but a state total?

A. For 1960 or 1964, no. The most recent date of which [fol. 716] this information was compiled on the smaller area basis was 1958, at which time the Department of Justice compiled the Alien Address Report by county. Now, that was the basis for allocation in the table that I have been discussing there.

Q. But you don't know where these aliens live with respect to election districts?

A. By district, no; only on a broad idea with respect to counties.

Q. Would that same thing also be true of military personnel?

A. No, we know—

Q. Military personnel living off Base?

A. Well, let me state exactly here—the 1960 Census gave us the number, the total population of each census tract and then gave us the number of persons in the Armed Forces in each tract. So that regardless of whether they were living on base or living off base, for example, you can tell how many Armed Forces were living in Waikiki or Makiki or Waialae-Kahala on the census date. You know

they were not living on the base. They also gave us the total number of persons living in each military installation. Now, those are not broken down by military status. In other words, the number of persons enumerated in Schofield Barracks included those civilians, those civilian dependents of the Armed Forces, and the Armed Forces themselves, and perhaps some civilian employees of the Armed Forces. [fol. 717] Q. Is there any reasonable practical method of determining the number of military personnel and their dependents who are eligible to vote in Hawaii by representative district or by election district or by precinct?

A. The number of military dependents who are eligible to vote by representative district, this would strain the available statistical sources to the breaking point, I'm afraid.

Q. Now, as these problems are faced, you go to the Lieutenant Governor's Office and get the number of registered voters for each representative district, and do you have to make any estimate to do that?

A. By existing representative district, we have the exact number of representative voters by the 1960 elections, the 1962 elections, and so on.

Q. One more question. The method of equal proportions can be used with respect to any base?

A. That is true, we could use it.

Q. The number of names in the 14th District as compared to the number in the 12th and people registered?

A. Yes. It is simply a mathematical technique to minimize the discrepancies when you have six geographic areas and a base for each of those areas.

Mr. Dodge: No further questions.

[fol. 718] Judge Pence: Mr. Padgett, before you continue, inasmuch as it appears that there are certain avenues which have been opened up, we will take a ten-minute recess. (A recess was taken.)

AFTER RECESS

Judge Pence: Mr. Padgett.

By Mr. Padgett:

Q. Mr. Schmitt, on page 4 of Defendant's Exhibit A appears the following paragraph, that is, the third paragraph:

"Many components of the eligible or ineligible population must be estimated from inadequate data. For example, it is possible to obtain civilian non-institutional population 20 and over from the 1960 Census, but data on military dependents registered in other areas, aliens 20 and over, absentee voters, and persons with less than one year residence are not readily available. Such a set of estimates is necessarily inexact, even at the State level; for counties or smaller areas, or for postcensal dates, even greater imprecision is inevitable."

Is that still your opinion?

A. It is.

Q. Now, with reference to your census figures, you say the census tract boundaries do not in any sense coincide with the district boundaries, voting district boundaries, for [fol. 719] the purpose of electing representatives as presently constituted?

A. In most cases, I would say at least three quarters of the boundaries do not coincide.

Q. Going down below this census tract, what is the next unit that the census has, smaller unit?

A. Below the census tract, they do publish block statistics, as I said, for Honolulu City and for Hilo and Lahaina and Wailuku. However, for areas other than these, the smallest unit is the enumeration district, an area averaging 800 in population, which is used as an administrative unit. Statistics are not normally published for these districts and it is used for covering the single—the Bureau will provide statistics for enumeration districts at cost.

Q. These are not presently available in the State?

A. We do have a total population count in enumeration districts in an unpublished form. That is, we have a typewritten page which is reproduced by the ozalid process, I believe, in a limited number of copies by the Department of Transportation, and the Department of Transportation is presently engaged in mapping the enumeration districts and putting on the map within each district the population from that unpublished form, which we obtained from the Census Bureau.

Q. How soon do you think that particular endeavor will be finished? How soon will they have a map which will set up the enumeration districts?

[fol. 720] A. It was found that certain maps which were supposedly in the State were missing. However, those were obtained and I understand within the week the work will be completed.

Judge Pence: Excuse me, Mr. Padgett. (To the witness) You mean within seven days or within the next two or three days?

The Witness: I would say that by Friday of this week, Friday afternoon, the work should be completed. I understand that it is simply a matter of putting some corrections and additions on the maps that they have completed, with the exception of these corrections already.

Judge Pence: One moment, Mr. Padgett. In line with this map, except for these last-minute amendations and corrections, and so forth, would it be possible for you to secure a sample map and show the Court exactly what is being done on those maps?

The Witness: I should be happy to do so.

Judge Pence: Even though they are not finished?

The Witness: Yes.

Judge Pence: Proceed.

By Mr. Padgett:

Q. That map would be available in undertaking to draw district lines, to try to balance population?

A. That's right.

Q. Has there been prepared by you or your department [fol. 721] or anyone, to your knowledge, a schematic redistricting, redistricting of the State, looking toward the balancing of population for purposes of apportionment?

A. When this matter first came up, the Governor asked my department to lay out a working set of maps which would show twenty-five proposed senatorial districts and fifty-one proposed representative districts in which substantially similar populations in each would be the major criterion, and the basis would be the total population, 1960 Census, using census tracts and census county division boundaries. Such a set of maps was prepared for working purposes, and then set aside because it was decided that because of mechanical difficulties in the registration of voters, it would be better to go along on the existing precincts. However, on the request of the Senate and approval of the Governor, I did provide the State Senate with a copy of each of the maps so prepared.

Q. What was the mechanical difficulty with regard to precincts?

A. In a discussion with the Lieutenant Governor and Emperor Hanapi of the City and County, the City Clerk, we learned that registration of the entire electorate of Oahu in short order by new district lines would be rather difficult for the City Clerk's Office. And he asked, and Mr. Richardson directed him, that the boundaries follow exist- [fol. 722] ing precinct boundaries to minimize the mechanical difficulties of reregistration.

Q. And you had not as yet prepared any schematic, any scheme which on a map does follow existing precinct lines?

A. No. Here the problem was that we had to estimate population by existing precincts. Now, a member of the Lieutenant Governor's staff is working under our supervi-

sion on this job. It cannot be completed until the Department of Highways, the Division of Highways, Department of Transportation, completes its mapping of the enumeration districts.

Judge Jertberg: Do I understand, if you create new district lines, one of the difficulties would be to have the voters who, because of the new district line, would have to reregister to be able to vote in the new district? Is that one of the problems?

The Witness: Mr. Hanapi said it would either have to be a reregistration or the development of a new street index by which all registered voters as of today can be reallocated to the new precinct and district.

By Mr. Padgett:

Q. Now, we have been discussing the mechanical problems of redistricting. In addition to the mechanical problems of reregistration of voters and matters of that nature, are there not also involved in this problem other factors such as political complexion of the people in a certain district, economic levels and matters of that nature which [fol. 723] are normally taken into consideration?

A. In our set of maps based on census tract boundaries, and using 1960 total population, we disregarded homogeneity of districts, feeling that first of all in the Legislative Reference Bureau's analysis of the Supreme Court decisions, homogeneity had been given, I would say, a tertiary importance. The stress had been on substantial quality of population first; second, on contiguity and compactness of the areas. And only after some minor points, social, ethnic, political homogeneity. And, of course, as a practical matter, the very first of those criteria was so difficult to achieve, using the rather unwieldy building blocks we had to work with, that we were happy to achieve this substantial equality of population regardless of any violations of ethnic identity or economic homogeneity. For example, we wound up putting Portlock Road in with Waimanalo Val-

ley, which would be a rather interesting combination, I believe.

Judge Pence: For the benefit of the record, will you state the ethnic and economic homogeneity of Portlock Road as compared to Waimanalo Valley?

The Witness: Well, Portlock Road is a high-income area.

Judge Pence: Mr. Henry Kaiser, I think, lives out there, doesn't he?

The Witness: He does. He lives at the end of Portlock [fol. 724] Road. It is primarily Caucasian. I would assume its politics to be rather Republican, largely managerial.

Judge Jertberg: It is a pretty violent assumption with Mr. Kaiser there.

The Witness: It is largely Republican, I would say. On the other hand, Waimanalo Valley contains a Hawaiian Homes Commission area occupied by people of pure or part-Hawaiian blood. It has a consistently Democratic voting record. The incomes tend to be rather low. And the occupational structure is quite different than that of Portlock Road.

By Mr. Padgett:

Q. Well, considerations of such combinations are of a political nature and not part of the domain of your statistical office, I take it?

A. We could make no effort to try to combine or separate such areas. It was too difficult a task. So we ignored that criteria.

Judge Pence: Would all parties stipulate that there does not exist in the district presently created any gerrymandering of districts on the basis of political or ethnic grounds, or economic grounds? (Counsel confer.)

Mr. Padgett: Your Honor, in view of the fact of certain voting trends, I don't believe we can stipulate that there is not in fact the situation as of the present time.

Judge Pence: Well, you enlarge upon that. What do [fol. 725] you mean?

Mr. Padgett: What I am getting at is, regardless for what purpose the various districts were created, nevertheless it is true that there are districts which, for example, have all Democratic legislators, and there are districts which have all Republican legislators.

Judge Pence: Would you say, using the term "gerrymandering," meaning that there was deliberate action on the part of some economic ruling group or some ruling, controlling ethnic group, or some controlling political group, which made those lines and those particular places for the purpose of making sure that one certain district was controlled by one certain fact—

Mr. Padgett: Not having been a member of the Constitutional Convention, your Honor, I really don't know.

Judge Pence: We will leave that with you gentlemen to see if a stipulation concerning that can be made.

By Mr. Padgett:

Q. Now, Mr. Schmitt, in the 1960 Census, one heard rumors that they picked up the personnel of an aircraft carrier lying off Waikiki. Do you know anything about that?

A. It was not an aircraft carrier. There were two ships, one the Kiwishiwi, I believe it is pronounced, and the other the Black Hawk, or some such thing, I am not sure. I would have to refer to the original correspondence, where [fol. 726] the total personnel of perhaps four hundred who were assigned to an Enumeration District 91 which is located in Census Tract 19. I found that enumeration district and found that it was a district which included a strip of beach—well, the entire area makai of John Ena Road—I'm sorry—Kalia Road—to its intersection with Ala Moana, and makai of Ala Moana from the intersection of Kalia Road to Ala Wai Yacht Harbor. But excluding the Yacht Harbor itself. The Yacht Harbor was the location of a num-

ber of house boats and yachts which were listed as such. But here we had approximately four hundred of the ship's crews, military, classified as military, who were assigned to this enumeration district which presumably was on land. Now, when I checked further, I found that they were at Pier Hotel-7. They call it Hotel-7. And another pier, K-1, I believe. I'm not sure. It is immaterial. These are as nearly as I could tell at Ford Island. And it was simply a misallocation, a clerical misallocation of approximately four hundred persons at the time of the Census. I had some correspondence with the Bureau of the Census about this and they took a sort of a horrified view of it, saying, "That is four years ago; don't bother us with that."

This isn't nearly as bad as what happened in 1920 when they inadvertently threw 3,000 Pearl Harbor people into Pearl Harbor, which is part of the Ewa judicial district, into the Honolulu judicial district. And in 1950 I obtained [fol. 727] copies of the enumeration district data and found this error had occurred. So they had retrospectively in their recaps and current census report made that correction.

Judge Pence: One moment, Mr. Padgett, because I want to see that the Court understands this, too. In the total or gross census 1960 population, on Plaintiff's Exhibit 1, the figure of those 400 on those two ships would be included in the population of the State of Hawaii?

The Witness: It would be included under the 15th District, that is, 15th House District and 4th Senatorial District. That table was compiled before we were convinced that there had in fact been an error.

Judge Pence: 15th and 4th?

The Witness: That's right. I could give you at a later time the exact number of persons involved in this. They would have been assigned to the 10th Representative and 5th Senatorial Districts if this error had not been made.

Judge Bowen: Mr. Padgett, may you suffer one more interruption? If you know, what is the numerical difference

between the number of registered voters and the number of the population of Hawaii in 1960, was the numerical difference determinable from your statistical studies?

The Witness: The difference between the number of registered voters and the total population?

Judge Bowen: Well, the number of the population which [fol. 728] may be probably determinable from your study, your statistical study and the guide-lines which you applied and the conclusions you testified to today about the gross population and what persons you took into account.

The Witness: Well, the total population of the State was 632,772. This figure up here is in my testimony before the Senate on Table 3, on page 8. The population of twenty and over, of course, is only 360,193. We have a very young population. Perhaps 45 per cent of our population is under the eligible age to vote.

Judge Bowen: The difference is what? I want to know what you think the difference is. What is the number?

The Witness: Well, the number of persons who were on neither eligible to register or registered was the difference between 632,202, which is roughly 430,000 persons who did not vote, who were either too young or otherwise ineligible or simply did not bother to register.

Judge Bowen: Does that represent the number of people which constitute the difference between the number of registered voters and the number of gross population as you determined it?

The Witness: That's right, about 430,000.

Judge Bowen: How much of that difference may be accounted for by the presence of non-permanent residents?

The Witness: Now, permanency is a rather—

[fol. 729] Judge Bowen: A substantial length of time.

The Witness: —as I mentioned earlier, a rather surprising proportion of the Armed Forces are either Hawaii-born or have lived in Hawaii for at least one year. Now, this degree of permanence would be, I suppose, a matter of definition. The population under one year, my adjusted fig-

ure would be around 11,000. This is only the population—of course, civilian and age 20 and over, and non-aliens. We, in addition, have some rather odd groups such as students who are classified by their actual place of residence—I mean where they are actually sleeping. For example, a California student, California native, who is attending the University of Hawaii and is living in one of the student dorms or a rooming house here, would be enumerated in that rooming house or dormitory. A Hawaiian native living and attending school, say, at Berkeley and living in a dormitory at Berkeley is enumerated there.

Judge Bowen: I do not wish to indulge in further discussion of the details of your study, but I wish you would just summarize by giving in answer to my question what specifically is the numerical difference between the number of registered voters, which I understand is the basis, instead of population,—what I want to know is, what is the numerical difference between them, namely, the registered voters, and this number of people, the population which it is claimed by some should be the basis—

[fol. 730] The Witness: Well, the total population, as I said, is almost 633,000. The number of registered voters is 202,000. It is somewhat less than one-third of the total population. And the number not eligible, or if eligible not registered, is 430,000, and is somewhat greater than two-thirds of the total population.

Judge Bowen: Is that the difference between the number of registered voters and the number of the gross population?

The Witness: Well, the census count on total resident population is 632,772.

Judge Bowen: I wish you would give me the figures. Have you got a paper and pencil? I want your figures, not mine. What is the difference so as to show the number of people that some may contend are not represented, as to whom there is not equal proportion or representation?

The Witness: Well, of course, it is simply by comparison of this total population with the registered number, roughly 430,000.

Judge Bowen: Does that represent, according to your statistical study, the number of people theoretically who are not represented by this redistricting to the extent that their representation in the legislature is equal to the representation of the needs of all other voters?

[fol. 731] The Witness: Approximately 430,000 persons would be excluded from the apportionment formula if it were based on registered voters. In other words, more than two-thirds of the population.

Judge Bowen: You may inquire. Thank you.

By Mr. Padgett:

Q. Now, Mr. Schmitt, did I understand correctly that under the census method an approach to this problem, if they happen to hit the census today when, say, they had 5,000 marines ashore on the north end of Molokai, that they would pick them up there?

A. That is a tough one to answer. If those marines were normally based, let us say, at Kaneohe Marine Air Corps Station, I suspect they would be allocated, too, since it is Tract 108, which is the Marine Air Corps Station. On the other hand, if they happen to be in a transient status, suppose they were being moved from a west-coast base to a forward area and were landed here temporarily, they would be assigned there. In the case of persons who have no other usual place of residence, either by virtue of being homeless people or by being reassigned from one job to another job in another geographic area and just passing through here on the census date, that is where they are listed.

Q. Next. Suppose on your census date you happened to have the fleet anchored in the Oahu roads—

Judge Pence: That is off the coast of Maui?

[fol. 732] The Witness: Yes.

Judge Pence: And that would be in reference to Lanai itself.

By Mr. Padgett:

Q. Would the personnel on board those ships be picked up in this district?

A. Theoretically, yes. I think that the practical matter probably would be that somebody in the Census Bureau would simply switch them back to Pearl Harbor if that is where they came from.

Q. I thought your testimony here in Exhibit A states with reference to ship's crews that the total population excludes ship's crews that may be home-ported in the area but temporarily outside of the area. And instead, it apparently includes ships that are temporarily, the personnel are included in the place where they temporarily are in port.

A. By census definition, a ship's crew that is in port on the census date is so enumerated on this port. I was thinking here that perhaps such a ship's crew might have been simply on a cruise from Pearl Harbor and in theory they had just been enumerated if they were in Lahaina Roads in Lahaina.

Q. Now, if one of the large British ships such as the Oronsay were in a Honolulu port, that crew is picked up in the census figure, is it not, even though there may be no United States citizens among the crew?

A. I would have to check into the enumerator's reference [fol. 733] manual on this. And I frankly, if I find any information on it—there will probably be some information back in Washington as to how they would treat those. I would suspect that they would include only those American citizens aboard the ship. But I had better not say anything on that. I am not sure.

Judge Pence: There are statistics which actually exist. For instance, the Second and Third and Fourth and Fifth Marine Divisions, for example, during the war were sta-

tioned in the Waimea District on the Big Island or on Maui. These are facts which actually exist in Hawaii.

By Mr. Padgett:

Q. Turning to what your Honor has suggested, as I take it, the military personnel currently stationed at the time of the census at Schofield Barracks is picked up and carried in the Fifth Senatorial District—

A. It is.

Q. And if a marine division were stationed on one of the other islands, such as on the Island of Hawaii, on the census day, that population would be picked up and carried as a part of the population of that particular place?

A. That is true. There were 285 Armed Forces on the Big Island at the time of the census.

Judge Pence: 285,000?

The Witness: No, 285 persons.

By Mr. Padgett:

Q. They took no census during the war, but if they did [fol. 734] take a census at the time that you had one or two divisions on the island, it would throw the population figures very far out of kilter, wouldn't it?

A. Well, the Census Bureau, as of July 1 of each year, makes an estimate which is supposed to be completely comparable with the centennial census count. Well, they didn't publish such during the war. At the end of the war, they did go back to 1940 and for each year thereafter. It is rather interesting to note that the population of the Territory of Hawaii on July 1, 1944, was well over 800,000, far more than it is today, and included 407,000 members of the Armed Forces.

Q. And is that estimate broken down by anything other than the Territory of Hawaii at large?

A. Simply a grand total.

Q. So that you can't get an estimate, for example, what the population of the Island of Hawaii was at that time?

A. No. We do have a breakdown on Armed Forces by island for the years beginning at 1959, at every six-month interval, based on our own surveys.

Judge Pence: Are we to understand that the census dates, instead of being every ten years, presupposing that on the census date of July 1944, presupposing that the re-apportionment was taken beginning as of that beginning date, then if I understand you correctly, on that date there would have been some 407,000 members of the Armed [fol. 735] Forces in the State of Hawaii?

The Witness: Yes.

Judge Pence: And out of a round total of 800,000?

The Witness: About 850,000.

Judge Pence: So the Armed Forces run on that basis, would provide a reapportionment basis of almost half of the electoral districts?

The Witness: That is so.

Judge Bowen: How many of that 230,000 that you spoke of a few moments ago in response to my question would that military population account for?

The Witness: In 1960, the number of members of the Armed Forces, the total number of members of the Armed Forces was either 54,000 or 47,000, depending—the census count was 47,000, and the Department of Defense counted 54,000.

Judge Bowen: I wish to say that in my question I speak of military dependents and military persons, and that is what I mean, to include all of those persons because of the military service.

The Witness: They were in addition.

Judge Bowen: Only during that time.

The Witness: The number of military dependents as of April 1st, 1960, the census date was, according to the local commanding officer,—and this figure is not available to the census,—but according to the commanding officer, it is

[fol. 736] slightly in excess of 60,000. Today it is slightly in excess of 69,000.

Mr. Padgett: I have no further questions.

Judge Pence: Does the Attorney General have any questions?

By Mr. Kanbara:

Q. Mr. Schmitt, with respect to the military household heads in Hawaii, you mentioned that about 8.0 per cent were born in Hawaii, about 71 per cent have been in Hawaii at least one year, which would indicate that on the basis that you are eligible or you might be eligible to vote if you have physically been in the islands one year; that roughly 79 per cent of them might possibly be eligible to vote.

A. Well, I won't say that. Those figures aren't administrative. But based on the number who have been here one year, it is about 71 per cent of the military household heads. Now, this excluded at that time approximately 30,000, I would say, probably 35,000 who were not living in households. That is, the barracks population. I suspect they are more mobile group and they would have a much lower proportion, they would be a much lower proportion of Armed Forces who have been here more than a year. However, the 23,900 military household heads, that is, servicemen living in regular housing units, in houses or apartments such as Capehart or in private housing, of which there were quite a number, of that number, 71 per [fol. 737] cent had been here at least a year.

Q. Now, with respect to the inclusion of all Armed Forces personnel stationed on board ships, the inclusion of these people, the same practice is followed in San Diego, California, say, or in Norfolk, Virginia, or Rhode Island.

A. That is true. In fact, the proportion of Armed Forces in other states in a number of cases exceeds that of Hawaii. In Virginia, for example, there is a very high concentration of Armed Forces. In Alaska it is almost phenomenal, a drastic proportion of the population consist of either

members of the Armed Forces or dependents. The United States Congressional reapportionment each decade is based on total population.

Judge Pence: What would be the percentage in Alaska, approximately?

The Witness: I don't have the figures handy but including dependents, I believe it is close to 40 per cent now.

Judge Pence: Of the total population of Alaska?

The Witness: That's right.

Mr. Kanbara: Thank you very much.

Mr. Padgett: Your Honor, might I ask one question on Exhibit 1 that I didn't cover?

Judge Pence: Yes, Mr. Padgett.

[fol. 738] By Mr. Padgett:

Q. Turning to Exhibit 1, Mr. Schmitt, and looking under the area, the portion designated as the Senate—

Judge Pence: What page is this?

Mr. Padgett: Exhibit 1.

Q. (Continuing) —I note that you carry the 1st District in Hawaii in the 1960 Census as having 44,297 population; and in the 3rd District on Maui as having 42,855 people. And yet you give the 1st District one Senator and the 3rd District two. Can you explain how this is consistent?

A. Yes. Assuming this isn't a typographical error,—and this was typed by the Office of the Attorney General and I doubt if it is an error—but there is a certain modification in the method of equal proportions used locally and specified by the State Constitution; that is, that there is first to be a reapportionment based on four basic areas. This was read, I believe, for the record yesterday in the pretrial, in which the four counties, including Kawaihau, which is part of Maui County, each represents a basic area. There is then an apportionment by district within these areas. Now, this can cause considerable hardships to a place like, taking the House districts, for example, a

place like Hilo which, because there are a number of very tiny population-wise districts elsewhere on the island, the island gets only so many of the population in the method of equal proportion, and then these form the new basis for [fol. 739] reapportionment within the district, separate districts of that county. That is also true, I believe, of Senatorial districts in which there is the additional provision that no district have fewer than one. Maui constitutes a single Senatorial district, but the Big Island has two Senatorial districts, which is different in population. One is a rather large population, population-wise, and the other quite small. This has resulted in contradictions and resulted in apparent computations which—

Q. Well, do I take it that what you are saying is that your column entitled "Reapportionment by Method of Equal Proportions," is based on—I should say is not based in fact on population alone but has some other factors added in?

A. It is based on the method specified in the State Constitution as to doing this in two stages; that is, first, by basic area, and, secondly, by district within each basic area.

Q. I thought this was applied in the State Constitution to the House of Representatives?

A. I know it is in the State House of Representatives. I am not sure about the Senate, I must confess at this point. You are quite right there. As to the Senate—I believe we were simply following the procedure established for the House in the State Constitution.

Q. And applying it to the Senate in there?

[fol. 740] A. Yes.

Mr. Padgett: No further questions.

Judge Pence: Mr. Kanbara?

By Mr. Kanbara:

Q. Mr. Schmitt, do you have figures corresponding to the Senate figures here, that is, the reapportionment for

each Senatorial district on the basis of the 1960 population, not applying the one for each basic area formula; that is, going directly on the method of equal proportions on the basis of the population?

A. Taking six districts and the method of equal proportions?

Q. Yes. Without first allocating one to each district.

A. For each, on the basis of total population, I do not have those handy. I believe I have such computations in my notes in my office and I could bring them at a later time.

Q. And allocating one to each basic area first, that is the reason that you have the discrepancy between the 1st Senatorial District in Hawaii and the 3rd Senatorial District?

A. In a sense that is the case.

Q. For example, in the 4-3-2 formula that has been set out in House Bill 3, the application of that in a sense might—

A. This was simply the use of ground rules, so to speak, that may not have been applicable. Each time that I went through these computations, I asked whoever was request- [fol. 741] ing the tabulation on what basis to do this. And we didn't cover all possible combinations, I'm afraid in this particular case.

Q. My question is the reason for the discrepancy here, the allocation of one senator to each basic area without regard to population.

A. No. This was not done. The discrepancy occurs when you are doing it in two stages. That is, first allocating by county and then allocating by district within the county. However, there is the further problem that we always followed in the State Constitution with regard to the House, that each district was to receive a minimum of one. Now, this is not the four off the top, so to speak, a practice recommended by the Senate. This simply means that you give one regardless, and then start on the second line in the case of the priority numbers.

Judge Jertberg: For the purpose of the record, we have been talking about this and this and this. I assume the questions were directed to Plaintiff's Exhibit No. 1, isn't that right?

Mr. Kanbara: That's right.

Judge Jertberg: And the discrepancy you are talking about relates to the first and the third under the heading of the Senate, isn't that true?

Mr. Kanbara: That's correct.

Judge Jertberg: That is what you were talking about?

[fol. 742] The Witness: Yes.

Judge Pence: Based upon the reapportionment method indicated on Exhibit 1 for the Senate, which we have been just discussing, you say, then, that under that, under the equal reapportionment, under the method of equal reapportionment, that the 1st Senatorial District of Hawaii would be giving to each voter there the same proportion in the representation that would be given to the voters in the 3rd, namely, Maui?

The Witness: This was computed, as I said, by the method proposed for the House in the State Constitution, and using this modification of it, this apparent anomaly occurs. There are many of these modifications, in fact, that can be applied to the basic method, the method of equal proportions. And it can create a vast number of possible variations in the number of representatives, depending on whether you specify a minimum of one or a minimum of zero per district, whether you do it in one stage or two stages, and what base you use on the registered voters.

Judge Pence: Mr. Funaki, do you have any questions?

Mr. Funaki: No, your Honor.

Judge Pence: Do I understand you correctly, Mr. Schmitt, that you have worked out or are working out a schematic working map showing the twenty-five Senatorial Districts and fifty-one Representative Districts with substantially similar populations?

[fol. 743] The Witness: That is true.

Judge Pence: Is this redevelopment on the basis of the total gross population of the State?

The Witness: Yes.

Judge Pence: According to the 1960 Census?

The Witness: Yes, that is.

Judge Pence: Have you also worked out any schematic map based on total registered votes?

The Witness: No, because we had not been instructed to do so and we have not.

Judge Pence: After you worked out any such schematic maps, based upon the table, Table 1 of Exhibit A, namely, on the basis of those eligible to register?

The Witness: No, because the information was not available. It is a small area.

Judge Pence: Would it be reasonably possible to work out such a schematic map showing the 25 Senatorial Districts and 51 Representative Districts based upon those eligible to register as you work out the same table?

The Witness: The statistics, I'm afraid, are not available in sufficient detail to do it with enough accuracy for the purposes of this Court.

Judge Pence: Do I understand that you are saying that with the statistics which are available or can be with reasonable effort made available it would be, in your opin-[fol. 744] ion as an expert, practically impossible to redistrict the Senate and the Representative Districts of the State on the basis of those eligible to register?

The Witness: We can do this by counting, but not for any smaller district. In other words, we can indicate how many there would be in Oahu, how many from Hawaii County, how many on the Big Island, how many from Kauai County. We cannot do it by district, that is, by representative district except in the case of the 6th and 3rd District, we cannot do it by senatorial districts.

Judge Pence: In your opinion, presupposing that in 1970 such information is requested of the Census Bureau, could a formula be set up whereby through the Census

Bureau such information could be developed and redistricting be made even on the House and Senate Districts in smaller areas?

The Witness: I can only answer with regard with what actually happened in New York State where New York, as I understand it, has a requirement that apportionment is to be based on citizenship; that is, the number of American citizens.

Judge Pence: That term American citizens, whether they are able to vote or not?

The Witness: That's right.

Judge Pence: This includes the children?

The Witness: Exactly.

[fol. 745] Judge Pence: The mentally incompetent, and so on, as you understand it?

The Witness: Yes.

Judge Pence: Proceed.

The Witness: And the Census Bureau was asked to bring census statistics on citizens as well as other characteristics normally obtained. And they agreed to do so and quickly expanded, added a couple of questions to the census schedules for New York State in which they asked citizenship. I believe it was on a hundred per cent enumeration basis. Please understand that the Census can only ask seven questions of each person. All the rest of the information is either, in the census, is either on 25 or 5 per cent sample basis. So this is a big item because it was asked of each person. And they charged the State of New York, I believe, $400,000 for this additional information. It was then used, at least intended to be used, by the State of New York for redistricting or reapportionment. I assume they would be willing to do it for the State of Hawaii if we were willing to pay for it.

Judge Pence: You have indicated that you will attempt to secure a sample copy of the map?

The Witness: Yes, sir.

Judge Pence: So that you may expect to be called back in the next 24 hours for a discussion on that. Are there

any questions from any other attorney? Subject to the [fol. 746] right of recall, Mr. Schmitt, you are excused.

The Witness: Thank you.

* * * * * * *

[fol. 747] ROBERT SCHMITT, a witness called by the Plaintiffs, having previously been sworn, resumed and testified further as follows:

OFFERS IN EVIDENCE

Mr. Tonaki: Your Honor, may we have these maps marked for identification?

Judge Pence: Mr. Clerk, what is the next exhibit number in order?

The Clerk: Exhibit 5, Plaintiff's Exhibit 5.

Judge Pence: Exhibit 5 being a map of the City and County of Honolulu. Is there any objection from any party? Well, we will withhold that question until later. [fol. 748] Exhibit 5 for identification, a map of the City and County of Honolulu.

Mr. Padgett: It is the City only.

Judge Pence: Pardon me. I am wrong. The City of Honolulu. And it is not the Territory of Hawaii either. And the Island of Maui will be Exhibit 6 for identification.

The Witness: Incidentally, there are several maps under that Maui map showing the remainder of Maui County.

Judge Pence: Perhaps they should be marked. The one on top will be marked 6-A, the one right under it, still referring to the Island of Maui, will be 6-B. How many more?

The Witness: There are two, I believe, two maps under there.

Judge Pence: All pertaining to the Island of Maui?

The Witness: County of Maui.

Judge Pence: County of Maui?

The Witness: One is Wailuku-Kahului and the other is Molokai-Lanai.

Judge Pence: 6-B will be the Island of Molokai.

The Witness: Well, the second one, the one immediately under Maui Island is an inset map for the urban area that is marked in the cross-hatching there and then the bottom map of the three is Molokai and Lanai.

Judge Pence: 6-C is Molokai and Lanai.

(The maps referred to were marked as Plaintiff's Exhibits 5, 6-A, 6-B, and 6-C for identification.)

[fol. 749] Judge Bowen: Mr. Witness, did you say that 6-B is a map showing the urban area of Maui?

The Witness: That's right, Wailuku and Kahului.

Judge Pence: Then we come to Exhibit 7 for identification, which would be which one, Mr. Tonaki? Which do you want as Exhibit 7?

Mr. Tonaki: The Island of Hawaii.

The Witness: That is the proposed redistricting map of the Island of Hawaii.

Judge Pence: That will be explained? And Exhibit 8 for identification, what does it purport to be?

Mr. Tonaki: Maui County.

Judge Pence: Maui County? I am going to arbitrarily call that map of Maui County Exhibit 6 for identification. Then 6-A becomes the Lahaina side of the Island of Maui. The one called the Island of Maui.

The Witness: The large one?

Judge Pence: That is the entire island.

Mr. Tonaki: Yes.

Judge Pence: That will be the Island of Maui.

The Witness: Where is the one mentioned as the County?

Judge Pence: 6-A, B, and C, the Molokai and Lanai, and then Exhibit 8 on the right.

The Witness: The Island of Oahu, Exhibit 8 for identifi-
[fol. 750] cation.

(The map referred to was marked as Plaintiff's Exhibit No. 8 for identification.)

Direct examination (Continued).

By Mr. Tonaki:

Q. Mr. Schmitt, will you explain to the Court what Plaintiff's Exhibit No. 5 for identification purports to show?

A. The map of the City of Honolulu, as an enumeration district and census tract map of the City of Honolulu for the 1960 United States Census. This map was prepared on a base supplied by the City and County of Honolulu, and using work maps supplied by the U. S. Bureau of Census. The heavy lines show census tract boundaries. The lighter lines within these larger areas represent the boundaries of enumeration districts. As I mentioned in my testimony yesterday, the census tract is the basic small statistical area for which census statistics are routinely published in census bulletins. It averages about three or four thousand in population. There are 113 such census tracts on the Island of Oahu. Tract 144, the remainder of the County, of the City and County of Honolulu, is French Frigate Shoals.

Each tract consists of one or more enumeration districts. An enumeration district is the area covered by a single census enumerator. It averages about 800 in population [fol. 751] and there are somewhat under 1,000 such enumeration districts in the State of Hawaii. Although statistics are tabulated by enumeration district, they are not published unless requested by a local government agency or a private firm willing to pay for this special tabulation.

The map shows not only the boundaries but I believe the population totals. If not on the map, those are available in separate form, a set of the total populations for each of the enumeration districts.

Mr. Tonaki: Your Honor, we offer Plaintiff's Exhibit No. 5 marked for identification into evidence.

Judge Pence: Any objection?

Mr. Padgett: I would like to ask one question on voir dire.

Voir dire examination.

By Mr. Padgett:

Q. You say there is a census tract for the French Frigate Shoals?

A. Tract 114 includes all islands of the City and County of Honolulu, other than Oahu. It includes Kure, French Frigate Shoals, Necker, Nihoa, and so on. The only populated island at the time of the census was French Frigate Shoals, which had 15 Coast Guardsmen.

Q. What representative district are they included in?

A. In the 17th, according to the State Constitution.

[fol. 752] Judge Pence: Any other questions on voir dire? Any objections? There being no objections, Exhibit No. 5 for identification is received in evidence as Plaintiff's Exhibit No. 5.

(The map referred to was received in evidence as Plaintiff's Exhibit No. 5.)

By Mr. Tonaki:

Q. Mr. Schmitt, on Plaintiff's No. 6 marked for identification—

Judge Pence: 6 is your County of Maui on the lower right-hand corner.

Q. (Continuing) —What does Plaintiff's Exhibit No. 6 purport to show?

A. The one at the lower right, that is a map of Maui County, which is on a base, I believe, prepared by the Department of Transportation. It shows a set of preliminary proposals for representative and senatorial districts based on total population, 1960, from the Census; using census county division lines and census county division population totals as the basic components from which the proposed districts were developed. This was done in response to a request from Governor Burns for a beginning for a preliminary allocation for his consideration. It has no official

status. He has not approved this. It is simply shown here as an example of a possible districting. The work was per-
[fol. 753] formed by Robert Souza of the Department of Planning and Economic Development under my general supervision. Mr. Souza is one of the spectators, incidentally, and can answer any detailed questions on this. The major criterion was substantial equality of population, although an effort was made to show areas as compact and as contiguous as possible. Of course, contiguity is rather awkward when there are four islands in the County, and three of those have insufficient population for a single representative district. If we wish close similarity of the total population among the districts—

Judge Pence: When you use the term "population," you are talking of total or gross population, census population?

The Witness: The total population as reported in the Census. In the case of Maui Island or Maui County, there is very little difference.

Judge Pence: Wait. Maui Island or Maui County?

The Witness: Well, this is true of the county as a whole and of the island forming Maui County. They tend to be relatively homogeneous in population composition and have relatively few military stationed there or included in the Census.

Mr. Tonaki: Your Honor, we offer Plaintiff's Exhibit 6 marked for identification into evidence.

Mr. Padgett: You described Exhibit 6 as including the
[fol. 754] County of Maui.

Judge Pence: Are there any objections? Exhibit 6 for identification is received in evidence as Plaintiffs' Exhibit 6.

(The map referred to was received in evidence as Plaintiffs' Exhibit No. 6.)

By Mr. Tonaki:

Q. Now, will you explain Exhibit 6 marked for identification?

A. I believe we are now discussing the large map of Maui. This map was prepared by the Department of Transportation, using a base map developed as part of the State Highway Planning Survey, and showing census tracts and enumeration district boundaries devised by the U. S. Bureau of the Census for the 1960 Census of Population and Housing. These boundaries were transcribed from more detailed work maps supplied by the Bureau of the Census. This map has just been completed. It was completed at the request of the State Senate.

Mr. Tonaki: I now offer Exhibit 6-A.

Judge Pence: Any objection? There being no objection, Plaintiffs' Exhibit 6-A for identification is received in evidence as Exhibit 6-A.

(The map referred to was received in evidence as Plaintiffs' Exhibit No. 6-A.)

By Mr. Tonaki:

Q. Will you now explain Plaintiffs' Exhibit 6-B for [fol. 755] identification?

A. 6-B consists of a map which is in effect an inset from the preceding exhibit. It shows the more urbanized area of the Island of Maui, chiefly the City of Wailuku and the City of Kahului. This inset was prepared to show greater detail because of the smaller districts in it, densely settled area. It was like the former map prepared by the Department of Transportation, using a base of its own preparation and showing enumeration districts and census county division boundaries from the 1960 U. S. Census.

Mr. Tonaki: We offer Plaintiffs' Exhibit 6-B for identification into evidence.

Judge Pence: Any objection? Voir dire? There being none, 6-B for identification is admitted into evidence as Plaintiffs' Exhibit 6-B.

(The map referred to was received in evidence as Plaintiffs' Exhibit No. 6-B.)

By Mr. Tonaki:

Q. Now, will you explain Exhibit 6-C for identification?

A. 6-C shows the remainder of the Maui County, plus Kahului. It is a map of the Island of Molokai and Lanai.

Q. Is it similar to 6-B?

A. It is. I might add that the only missing part of the County now is Kahoolawe, which does not appear on this map but has a population of zero.

[fol. 756] Mr. Tonaki: We offer Plaintiffs' Exhibit 6-C marked for identification into evidence.

Judge Pence: Any voir dire? Objections? There being none, Exhibit 6-C is admitted into evidence as Plaintiffs' Exhibit 6-C.

(The map referred to was received in evidence as Plaintiffs' Exhibit No. 6-C.)

By Mr. Tonaki:

Q. Will you explain Plaintiffs' Exhibit 7 for identification?

A. Exhibit 7, I believe, is the map of the Big Island shown there. This map was prepared by the Department of Planning and Economic Development.

Judge Pence: Excuse me. The Big Island is the Island of Hawaii?

The Witness: Hawaii, which is co-terminus with the County of Hawaii, an island of 4,021 square miles, a population of approximately 60,000. This map shows, as did the map of Maui County previously discussed, a set of preliminary and unofficial proposals for representative and senatorial districts for the County of Hawaii, in which the lighter lines show proposed representative districts and the heavier lines senatorial districts. With respect to this map, which was prepared in my Department—shall I point out one difference between this and the other maps in the same series? The Island of Hawaii under the method of equal

[fol. 757] proportions, and using the 1960 Census population total as the basis, emerged with an odd number of representative districts. In all other counties, it was possible to combine adjacent pairs of representative districts to form senatorial districts, quite neatly. In the case of the Island of Hawaii, because there was an odd number of representative districts, it was impossible to nest, so to speak, each representative district as one of a pair of senatorial districts. As a result, one of the representative districts extends across a senatorial district line.

Mr. Tonaki: We offer Plaintiffs' Exhibit No. 7 marked for identification into evidence.

Judge Pence: Voir dire? I have one, two, or three questions in connection with the Island of Hawaii. I take it that on Exhibit 7 for identification, in attempting to set up your senatorial districts, you have not attempted to use the entire as a whole as one senatorial district but rather to set up two senatorial districts therein?

The Witness: Yes, sir, because of the procedure used, the method of equal proportions, and the stipulation by the Governor in requesting this work, that each district have one representative and each representative district and each senatorial district one senator. This meant that there were two senatorial districts and five representative districts on the Island of Hawaii.

Judge Pence: In your study of the history of the Island [fol. 758] of Hawaii, did you find any indication that in the entire time there has been but one senatorial district in the entire island?

The Witness: I'm sorry—

Judge Pence: When you studied the history of the Island of Hawaii, did you come across any indication that at one time the entire island was but one senatorial district?

The Witness: I am aware only of the existence of the 1st and 2nd Senatorial Districts.

Judge Pence: At the present time, how many Senators are in the 1st Senatorial District?

The Witness: There are, I believe, two in the 2nd.

Judge Pence: And in laying out Exhibit 7 for identification, you didn't endeavor to divide it into senatorial districts?

The Witness: That's right.

Judge Pence: And how many would you have had in the Senatorial District No. 1—what population, roughly?

The Witness: Well, each of these senatorial districts has approximately 30,000 population. Now, on a statewide basis, the population per senatorial district worked out to a total more than 25,000, because on the Big Island we made this in two stages specified for representatives in the current State Constitution, which means that the Big Island emerged with two senators, and somewhat greater popula-
[fol. 759] tion per senator than was the average.

Judge Pence: Any other questions on voir dire? Any objections? Exhibit 7 for identification is received in evidence as Plaintiffs' Exhibit No. 7.

(The map referred to was received in evidence as Plaintiffs' Exhibit No. 7.)

By Mr. Tonaki:

Q. Will you explain Exhibit No. 8?

A. Exhibit No. 8 is proposed districting, like the preceding exhibit, but for the City and County of Honolulu. This is the one to the far right.

Judge Jertberg: Would you repeat that?

The Witness: This shows a preliminary proposal for the redistricting for the City and County of Honolulu. It is based on total population in the 1960 Census. Like the preceding ones, first there was a two-stage allocation of the number of representatives and senators. The first, as mentioned, by County. This gave Oahu twenty senators and forty representatives, based on the total population. We then split the island into twenty senatorial districts and forty representative districts, each representative district

being paired with adjacent representative districts to form a senatorial district. As in the previous one, the primary consideration was substantially quality of population. The boundaries were drawn along census tract lines using published statistics for census tracts to give total population.

[fol. 760] Judge Pence: Excuse me. Did you not yesterday testify that the present redistricting is not along tract lines?

The Witness: That is true. The present districting is completely different. In this, the largest representative district in point of population is the one that includes Schofield Barracks. In fact, it is completely Schofield Barracks.

Judge Pence: Will you point that out, which one is that?

Mr. Kobayashi: This one. (Indicating)

The Witness: No, above that. I believe to the left of that.

Mr. Kobayashi: Right in here. (Indicating)

The Witness: Yes. And Schofield is the largest one that extends to the left of that, up into the Waianae mountains. Exactly. That one, yes. (Indicating)

Judge Pence: What is the number there?

Mr. Tonaki: 33.

The Witness: The numbers, incidentally, assigned to these are simply arbitrary numbers used for reference purposes in the office. That tract had a total population of somewhat over 14,000. It was the largest representative district and could not be broken down further because not only does it constitute a complete census tract but it is also a single enumeration district. The number of registered [fol. 761] voters I am sure would be considerably less.

Judge Pence: Can you give us an approximation of the number of registered voters in that area, No. 33, as indicated?

The Witness: I do not have that information.

Judge Pence: Can you give us an educated guess?

The Witness: I am sure that it would be in point of registered voters the smallest district on the island.

Judge Pence: Yet in point of total population, because it includes the military, it would be the largest?

The Witness: Over 14,000 members of the Armed Forces. I understand that at that time the population was at low ebb, that it was not at full strength. There were civilians in the area. Of course, most of the civilians were dependents of the Armed Forces. There are somewhat 2,000 housing units built a few years ago as part of the Capehart Act Housing Program. There are also presumably a few civilians who are employees of the Armed Forces rather than dependents.

Mr. Tonaki: We offer Exhibit 8 marked for identification into evidence.

Judge Pence: Voir dire? Objection? There being none, Exhibit 8 for identification is received in evidence as Plaintiffs' Exhibit No. 8.

(The map referred to was received in evidence as Plaintiffs' Exhibit No. 8.)

[fol. 762] Mr. Tonaki: I have no further questions.

Judge Pence: Mr. Dodge?

Mr. Dodge: No questions.

Judge Pence: Mr. Padgett?

Cross examination.

By Mr. Padgett:

Q. You said Exhibit 6-A was prepared at the request of the Senate?

A. The enumeration district map of Maui, I believe you are referring to, the large map of Maui up there.

Q. Yes.

A. Yes, that was prepared at the request of the Senate, and also approximately at the same time, the Governor requested the same information.

Q. Had this been shown to the Senate?

A. It was just finished, and at the request of the Court, was brought in here.

Q. So the answer is no?

A. No, that is true.

Q. How about the others? At whose request were each of the others prepared? Let's begin with 5. That is the City of Honolulu.

A. Oh, yes, that, like the map of Maui, was prepared by the Senate. All of these have just been completed.

Q. They were prepared at the request of the Senate but [fol. 763] have just been completed and not been submitted to the Senate?

A. That is true.

Mr. Padgett: I have no further questions.

Judge Pence: Mr. Funaki?

Mr. Funaki: No questions.

Judge Pence: Mr. Kanbara?

Mr. Kanbara: No questions.

Mr. Tonaki: Your Honor, if I may, I would like to have him explain the omission of the Island of Kauai.

Judge Pence: Go ahead.

The Witness: The enumeration district map of Kauai, I believe, is complete, too, at this time or just about complete. The Department of Transportation has been working at top speed. There was a delay, as I mentioned earlier, because certain maps required to complete this, which were supposedly in the island, were found to be missing and we had to send to Washington for these maps. The Court had asked only for selected maps as a sample of what was being done. Hence, I did not bring the enumeration district map of Kauai. With regard to the proposed districting of Kauai, it so happened that these were the only maps for which we had copies run off, that is, prints had been made, final prints. We have the tracing for Kauai. And it wasn't immediately available. I don't know whether there was any great urgency—I didn't know whether there was any great urgency to bring that. However, I can explain [fol. 764] the districting for Kauai.

It consists of a single senatorial district covering the entire County, and the four islands of Kauai County, namely, Kaula, Nihoa, Niihau, and Kauai.

Judge Pence: And the population, please?

The Witness: The population of Niihau is about 250 at the time of the Census. The remaining population of Kauai County is slightly over 28,000, and was on the Island of Kauai.

Judge Pence: The other two islands you mentioned have no population?

The Witness: They were unpopulated. The two representative districts were roughly the 1st which consisted of Hanalei, Kawaihau, Lihue, and part of Koloa district, the part adjacent to Lihue. The remainder of Koloa District, including Niihau Island and the other minor islands, formed the 2nd Representative District. Each representative district had a population of approximately 14,000.

Judge Pence: For the benefit of the record in this case, —and you know these were illustrative of the work being done and of the problems involved—may we mark the map of the County of Kauai as Exhibit No. 9 for identification, and if there are no objections, after all parties have had a chance to see it, it will be admitted now.

The Witness: You are referring to the proposed dis- [fol. 765] tricting map?

Judge Pence: Yes, proposed districting map, Exhibit No. 9 will be the County of Kauai, the districting map.

(The map referred to was marked as Plaintiffs' Exhibit No. 9 for identification.)

By Mr. Padgett:

Q. Mr. Schmitt, I would like to clear one thing up. Were not the Exhibits 7, 8, and now 9, the ones which show the proposed districting prepared by you at the request of the Governor?

A. That is true.

Q. And what disposition was made of that?

A. The Governor has not approved these when the Senate requested the maps, and the Senate in my testimony last

month asked to see the maps and the Governor authorized me to show them. However, they had no official status.

Judge Pence: Any other questions on voir dire? Any other questions?

Mr. Marumoto: May it please the Court, I have no intention of pecking at the witness, but I think I can clarify—

Judge Pence: Well, without clarification, do you have any questions?

Mr. Marumoto: Yes.

Judge Pence: Proceed.

By Mr. Marumoto:

Q. The Court asked you about the registration figure of [fol. 766] the district in which Schofield is located—

Judge Pence: That has been dentified as No. 33 on Exhibit No. 8.

Q. (Continuing) In the present delineation of districts, is that the 9th District on Oahu?

A. Schofield, I believe, under the State Constitution is part of the 9th District.

Q. And according to Exhibit 1, the 1960 population is 42,816, and the 1960 registered voters is 7,410. I think it is the lowest, is it not?

A. Which district is that last one?

Q. Ninth.

A. The number of registered voters was the smallest on Oahu.

Q. 7,410? And also in Defendant's Exhibit A, the population on the military base is 14,873, of whom 6,264 are civilians.

Judge Jertberg: Just a minute. What was the last exhibit you were talking about?

Mr. Marumoto: The last exhibit I was talking about is Defendant's Exhibit A.

Judge Jertberg: Exhibit A?

Mr. Marumoto: On page 3.
Judge Jertberg: On which page?
Mr. Marumoto: Page 3, paragraph 2.

[fol. 767] By Mr. Marumoto:

Q. Is Barber's Point in District 8?
A. It is in the 9th Representative—I'm sorry—it is the 10th, Barber's Point is in the 10th Representative District.
Q. And what other military base is in the 10th?
A. The 10th District includes a number of very large military installations, Hickam Field, Pearl Harbor Navy Shipyard, Camp Smith, the Marine Base, it includes Barber's Point Naval Air Station, and a number of somewhat smaller installations.
Q. Kaneohe is included in No. 8?
A. In the 8th Representative District.
Q. And according to Exhibit 8, it shows that Kaneohe has a population, military base population of 6,397, of whom 2,631 are civilians?
A. Yes.
Q. And in this tabulation on paragraph 2, you have the tabulation population of military bases in Schofield, Kaneohe and Barber's Point?
A. Yes, sir.
Q. And that makes up about 25,000, does it not?
A. Yes.
Q. And then the report here is that there were about 71,672; so that the balance of the 45,000 would be scattered over the other military bases?
[fol. 768] A. Yes. I can supply a complete listing, by the way.

Mr. Marumoto: That is all I have.
Judge Pence: Are there any other questions? Mr. Schmitt, how long after the 1960 Census was taken was it before all of the figures were available, for us, let us say, for the purpose of apportionment?

A. Are you referring to a preliminary count, advance count or a final count?

Judge Pence: Well, for the purpose of reapportionment, as an expert, which would you say would be the one that should be used?

The Witness: The final count, because this includes all the editing.

Judge Pence: When would that be available?

The Witness: The data for Hawaii were available on a small-area basis—

Judge Pence: Let us understand each other. When you use the term "small-area basis," you are talking about what?

The Witness: Census tracts or enumeration districts. And these were available in 1960 for the 1960 Census in the middle of 1961. I would expect that with continued improvement in computer technology, that even greater speed can be expected in 1970. The totals for larger areas are available sooner, by the way.

[fol. 769] Judge Pence: But on enumeration basis?

The Witness: In smaller areas basis, I would judge that the 1970 Census would be available probably in the spring of 1971.

Judge Pence: Presupposing the Legislature should meet at the same time as it now met, in the middle of February, would you as an expert forecast such material could be available to the Legislature meeting in the spring of 1971?

The Witness: I suspect that it would be a touch-and-go matter based on past experience.

Judge Pence: Now, how much time would you estimate it would take you, your staff, to set up a complete redistricting of the entire State in the nature of these Exhibits 5 through 8? You have indicated in these exhibits here—how much time alone would it take you and your staff to set up a proposed redistricting division, presupposing that you have the pertinent data available? In this case you have the gross population data.

The Witness: If we were basing this on total population and using the census tracts as the units which we would combine or use separately, this could be done within a week.

Judge Pence: Presupposing you were using registered voters as they now appear upon the rolls of the various counties?

The Witness: We would then, of course, have to use [fol. 770] precincts or existent representative or senatorial districts as the component of the new district. Of course, then it would probably take the same time and could be done following each general election, I suppose, as the data were supplied.

Judge Pence: But you feel you could turn out a division similar to the type you have indicated here?

The Witness: I think within a week, with a small staff of knowledgeable persons who know the geography of the islands.

Judge Pence: Do you have such a staff now?

The Witness: Yes.

Judge Pence: I have no other questions. Thank you very much.

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[fol. 771] OFFERS IN EVIDENCE

Mr. Tonaki: I have another exhibit being marked for identification.

[fol. 772] Judge Pence: Is it 11 for identification? It purports to be what?

Mr. Tonaki: It is a Standing Committee Report of the Constitutional Convention as extracted from the proceedings of the Constitutional Convention. It is a Standing Committee Report. I now offer that into evidence.

Judge Pence: Any objection? There being no objection, Exhibit No. 11 for identification is received in evidence as Plaintiffs' Exhibit No. 11, which purports to be a Standing Committee Report No. 92 of the Constitutional Convention.

(The document referred to was received in evidence as Plaintiffs' Exhibit No. 11.)

Judge Pence: What year was that?

Mr. Tonaki: June 23, 1952.

Judge Pence: Mr. Kanbara?

Mr. Kanbara: Your Honor, on the matter of housekeeping, we will introduce Exhibit GO-1 for identification.

Judge Pence: GO-1?

Mr. Kanbara: Yes, which shows the 1960 population and average population for the Legislature based on the 1960 Census. I will submit it in evidence.

Judge Pence: Is there any objection to the introduction of Exhibit GO-1, purporting to be a tabulation of the 1960 population according to the Senate and showing the average [fol. 773] 1960 population per legislator? There being no objection, the same is received in evidence as Exhibit GO-1.

(The document referred to was received in evidence as GO-Exhibit No. 1.)

Mr. Kanbara: Yesterday I quoted from the proceedings of the Constitutional Convention to show that the Constitutional Convention was considering the House and Senate as part of the entire package. And this is Intervenor Plaintiff's Exhibit marked GO-2 for identification, and it is now offered.

Judge Pence: Mr. Padgett?

Mr. Padgett: I don't object. No objection.

Judge Pence: Exhibit GO-2. Any objections?

Mr. Dodge: No objection.

Judge Pence: There being no objection, Exhibit GO-2 for identification is received in evidence as Exhibit GO-2.

* * * * * * *

[fol. 774] Mr. Tonaki: Your Honor, we have one more piece of evidence.

Judge Pence: Is this part of the Plaintiffs' case in chief?

Mr. Tonaki: Yes. This is a map of Kauai which was missing this morning.

Judge Pence: That was already introduced in evidence, even though it wasn't offered.

[fol. 775] Mr. Tonaki: I think it was marked for identification.

Judge Pence: It has already been received. That is Exhibit 9. My records show Exhibit 9 had been received. It is a map of Kauai. That is what it is, Mr. Tonaki.

Mr. Tonaki: Yes, your Honor.

Judge Pence: All right. Exhibit No. 9 is now in evidence. Now, Mr. Dodge.

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[fol. 776]

Excerpts from Transcript of Proceedings—January 11, 1965

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[fol. 777] OFFERS IN EVIDENCE

Mr. Tonaki: I have received a stipulation of the parties to this—to the following documents: One, is "Election Statistics of Hawaii," by the Department of Planning and Economic Development, dated October 15, 1964. That is—

Judge Pence: Exhibit No. 14. Any objection? No ob-
[fol. 778] jection. No. 14 is received in evidence.

(The document in question was marked and received in evidence as Exhibit No. 14.)

Mr. Tonaki: Next is another document by the Department of Planning and Economic Development, State of Hawaii, entitled "Military Personnel and Dependents in Hawaii," dated July 27, 1964.

Judge Pence: Call that Exhibit 15. Any objection to Exhibit 15? There being none, the same is received in evidence.

(The document in question was marked and received in evidence as Exhibit No. 15.)

Judge Beeks: Does that deal with Army, or with all of the Armed Services?

Mr. Tonaki: All of the Armed Services, Your Honor.

Next is a one-page—statistics relating to population by class for Hawaii, by legislative districts, 1960, also prepared by the Department of Planning and Economic Development.

Judge Pence: When was that prepared, do you know? Population by class.

Mr. Tonaki: I don't have any date on that, Your Honor.

Judge Pence: We'll call that one Exhibit 16. There being no objection thereto, the same is received in evidence as [fol. 779] Exhibit 16.

(The document in question was marked and received in evidence as Exhibit No. 16.)

Judge Beeks: I thought you said something about 1960 in connection with that exhibit.

Mr. Tonaki: Based on data in 1960.

Judge Beeks: I see.

Mr. Tonaki: Next, I have a map of the Island of Oahu showing Army, Navy, and Air Force installations; and also dividing the Island of Oahu into Senatorial and House Districts, with overlays to indicate where the Districts are.

Judge Jertberg: As presently existing?

Mr. Tonaki: That's right, Your Honor.

Judge Pence: Call that Exhibit 17. There being no objection, the same is received in evidence as Exhibit No. 17.

(The map referred to was marked and received in evidence as Exhibit No. 17.)

Mr. Tonaki: Next, I have a map of the 15 Representative Districts of the State of Hawaii, showing precinct boundaries, Your Honor.

Judge Pence: There being no objection—we'll call that one Exhibit 18. There being no objection thereto, the same is received in evidence as Exhibit 18.

* * * * * * *

[fol. 780] ROBERT SCHMITT, a witness recalled on behalf of the plaintiffs, resumed the witness stand, and testified as follows:

Judge Pence: This witness has already been sworn, being the same Robert Schmitt that gave us such fine information before.

Proceed.

Direct examination.

By Mr. Tonaki:

Q. Mr. Schmitt, do you have a copy of Plaintiff's Exhibit 14, entitled "Election Statistics of Hawaii"?

[fol. 781] A. Yes, I have.

Q. Did you prepare this Exhibit 14?

A. Yes.

Q. Will you turn to page 3—page 4, showing Table 3? There is a figure showing the population of Hawaii in 1960 to be 632,722 people. What persons, if any, does that figure exclude?

Judge Beeks: Just one moment. Table 4, you say?

Mr. Tonaki: Table 3, page 4.

A. This is the total resident population of the State, as defined by the Bureau of the Census. It includes all persons whose usual place of residence is in the State, including all Armed Forces, and who were in the State on April 1st, 1960. It excludes no one whose usual place of residence was in the State, unless you would consider, say, Hawaii-born persons in the Armed Forces stationed out of Hawaii. However, those are, by census definition, enumerated at their place of actual location on the census date. So that this is a true total.

Judge Jertberg: It's what we call "gross population"?

The Witness: Yes.

Mr. Tonaki: Yes, sir.

By Mr. Tonaki:

Q. Mr. Schmitt, you have broken down that total population into Senatorial and House Districts. Are those [fol. 782] figures by actual count, or estimates?

A. The Senate Districts are the actual populations since Senatorial Districts follow statistical District lines. In the case of the House, wherever a House District is defined by a boundary that does not quite follow a census statistical boundary—that is, a census tract or enumeration district line—it was necessary to make an estimate. This happened in several of the Representative Districts.

Q. What margin of error did you estimate in your estimates?

A. Well, for those Districts where an estimate was necessary,—as an example, I might cite the boundary between the 15th and 16th Districts, which runs down part of St. Louis Heights—for the total District as a whole, I would not consider it a very sizeable error. Certainly no more than 5 percent of either of the Districts which had to be estimated.

Q. Will you turn to Table 4 on page 5? On that table, you have "U. S. Citizens of Voting Age." What persons have you excluded in that category, if any?

A. All persons—well, now, are we referring to the entire series from 1900 to date? Or simply to the—

Q. Take 1960.

A. 1960. In 1960 it excludes all population under 20 years of age, and aliens. The number of aliens in the case of 1960 had to be estimated from data supplied by the U. S. [fol. 783] Immigration and Naturalization Service on aliens; and the age and sex distribution of the foreign-born population from the census.

Q. Did it include military personnel of voting age?

A. Yes, it did.

Q. Will you turn to Table 5 on page 6? You have a column showing the population of the State of Hawaii, age 20 and over. What persons have you excluded, if any?

A. Persons under 20 years of age only. It includes all persons, regardless of military status, who are 20 and over, and who are normally residents in the State of Hawaii.

Judge Beeks: The only difference between that and the previous one, then, would be dealing with alien population?

The Witness: That's right.

By Mr. Tonaki:

Q. Are the figures in "Population 20 and over" by actual count, or estimates?

A. That is by actual count, in that first column.

Q. In the next column, you have those eligible to register as of April 1st, 1960. Is that by actual count, or by estimate?

A. That's by estimate.

Q. What margin of error do you estimate in that?

A. Probably no more than 5 percent, in a maximum.

Q. Will you turn to Table 6 on page 7? You have a [fol. 784] column showing "Non-U. S. Citizens 20 Years or Older." Is that by actual count, or estimate?

A. The State-wide total is based on a total supplied by the Immigration and Naturalization Service, but distributed by age and sex and geographic location on the basis of an estimate.

Q. In the next column, you have "Residents Less Than One Year." Is that by actual count or estimates?

A. That's based on estimates.

Q. Going two columns over, you have "Data Showing Military Personnel." Is that by actual count, or estimate?

A. The figures in that column are estimated from an actual total. That is, to get the "Under 20," it was necessary to make an estimate.

Q. How about the military dependents? Is that an actual count or estimate?

A. The same is true there. That is, we had a total count on the number of military dependents in Hawaii, but it

was necessary to estimate the number of those that were 20 and over.

Q. Now, as to those military personnel and military dependents, do those figures include those who may be eligible to vote?

A. These are all military dependents 20 and over in the State of Hawaii, regardless of where they're registered to [fol. 785] vote. So it might include some Hawaii eligible persons.

Q. Will you turn to Table 7 on page 8? You have shown an estimated number of persons eligible to register to vote in Hawaii elections; and as in the previous table, you have excluded military personnel and military dependents, or declared them to be ineligible. Do they include persons who may be eligible to register?

A. In the two lines there, "Military Personnel" and "Military Dependents," I have included all military and dependents 20 and over in the State, regardless of where they may be registered.

Q. Now, in summary, Mr. Schmitt, what accurate figures do you have relating to gross population as against military population?

A. We have detailed information on the total population —total resident population, gross population—by small geographic areas for 1960. On military population, we have less detailed information, and certainly not by age; by geographic area.

Q. Can you segregate the population of the military bases from the gross population?

A. In total—well, we can segregate the total population on base, which may include civilians, from the total population.

Q. Can those figures be segregated according to legis- [fol. 786] lative Districts?

A. They can.

Q. How about all—

Judge Pence: May I have that read back—that last question?

(The question and answer were read by the reporter.)

By Mr. Tonaki:

Q. Can you get accurate figures, deducting all military personnel and dependents, regardless of where they live, from the gross population?

A. We can get 1960 data on Armed Forces regardless of where they live, and delete them. We cannot subtract the dependents because we do not have good statistics on the geographic distribution of military dependents.

Q. Now, when you speak of "Military" and "Military Dependents," do they always include those who may be eligible to register?

A. Yes. We have no good statistics on the proportion of Armed Forces or dependents in Hawaii, as to whether they are locally eligible or not.

Mr. Tonaki: No further questions, Your Honor.
Judge Pence: Mr. Dodge?
Mr. Dodge: I have no questions.
Judge Pence: Any questions?
Mr. Kanbara: Yes, Your Honor.

[fol. 787] Cross examination.

By Mr. Kanbara:

Q. Mr. Schmitt, would it be proper to say that you do not have figures showing the persons eligible to register, but who are unregistered by Districts?

A. We have no such data, and it would be very difficult to make even an approximate estimate by District.

Mr. Kanbara: That's all.
Judge Pence: Mr. Padgett.

Cross examination.

By Mr. Padgett:

Q. Mr. Schmitt, do you have Exhibit 15 before you?
A. Which?

Q. Exhibit 15, "Military Personnel and Dependents in Hawaii"?

A. Yes, I have.

Q. Would you turn to Table 9?

A. Yes. I have it before me.

Judge Jertberg: Just a minute, until we get it.

Judge Beeks: What page is that Table 9?

Mr. Padgett: 13, Your Honor. 13 of Exhibit 15.

Judge Beeks: I have it.

By Mr. Padgett:

Q. Do I understand correctly, Mr. Schmitt, that those two columns are two estimates by two different United States Government Bureaus as to the number of military [fol. 788] members of the Armed Forces in the State of Hawaii?

A. Yes. As noted in footnotes 1 and 2, they were developed by different agencies on somewhat different definitions.

Q. Well, which one is the basis which you have used in the figures that you have just referred to in Exhibit 14?

A. Are you referring to the 1960 population by—

Q. Yes.

A. Neither one of these. That is, the 1960 data were from the 1960 census of population. The census estimate here is the annual series as of July 1, provided by the Bureau of the Census on the basis of information supplied by the Armed Forces. And the Office of Business Economics estimate is based on similar information, but excluding the men aboard ship.

Q. Do you have any idea whether the men aboard ship would be sufficient to account for these rather considerable discrepancies between those two sets of figures?

A. Well, partly it's a matter of men aboard ship; partly a matter of the dating. That is, in one case it's July 1; in the other case, it's supposedly an annual average of monthly

or quarterly data. However, there is a very perplexing discrepancy for 1962 that we have been unable to resolve in a great volume of correspondence.

Mr. Padgett: I have no further questions.

[fol. 789] Judge Pence: I think, Mr. Funaki, you said you had no questions?

Mr. Funaki: No, I have no questions.

Judge Pence: Do you have any questions?

Judge Beeks: No.

Judge Jertberg: No.

Judge Pence: I have just one, I think. I notice on Exhibit 15, page 9, for the years '42, '43, '44, and '45, a large number of military personnel. Are the facts available to you, Mr. Schmitt, to show how that personnel was located in the then Territory of Hawaii? For example, how many were on Maui; how many were on Hawaii;—during any one of those years—how many were on this Island?

The Witness: I don't know statistics giving the geographic distribution; simply the Territory-wide totals.

Judge Pence: Were you here during that period?

The Witness: No, I wasn't.

Judge Pence: I have no other questions. Thank you, Mr. Schmitt.

(The witness left the witness stand.)

Mr. Kanbara: Your Honor.

Judge Pence: Mr. Kanbara.

Mr. Kanbara: If the plaintiffs are through with Mr. Schmitt, we'd like to—we may have Mr. Schmitt for additional direct examination.

[fol. 790] Judge Pence: Do you want him now?

Mr. Kanbara: Yes, Your Honor.

Judge Pence: There being no objection—Mr. Schmitt, retrace your steps.

ROBERT SCHMITT, was recalled as a witness for Intervenor Plaintiffs, and testified as follows:

Direct examination.

By Mr. Kanbara:

Q. Mr. Schmitt, I show you Exhibit GO-3, which is a map of the 15th District—15th Representative District. Have you had occasion to make yourself familiar with the composition of the electorate within the 15th District?

A. Yes, I have.

Q. In what connection was this?

A. On several occasions, some years ago, I made a careful study of census statistics on this District at the request of the then delegate to Congress who was interested in it. And more recently, I had occasion to review the data from more recent samples and censuses.

Q. And this District has six Representatives in the House, does it not?

A. That's right.

Q. Could you indicate to the Court the various—what you might call "sub-districts" on the basis of the composi-[fol. 791] tion of the population, and the nature of the industry or business within each?

A. Yes. The 15th District consists of a number of very distinct neighborhoods of what the urban sociologists would call "natural ecological areas."

Judge Beeks: Just a moment.

Judge Pence: The suggestion has been made by Judge Beeks that as you identify those various distinct neighborhoods, that you write down exactly what they are as you're testifying so that when we look at the map, without necessarily referring to our notes, we will be able to follow—

Judge Beeks: Just draw a line out to the side. It will be easier than trying to take notes on this thing.

The Witness: All right. Perhaps it would be even easier if I simply listed the neighborhoods by the precincts that make up the neighborhoods.

For example, beginning at the makai—the seaward end of it, the lower end of the map, Precincts 11, 23, 24, and 12 are Waikiki, extending from—on the ocean side of the Ala Wai Canal over to Kapahulu Avenue.

Precinct 10 is part of Kapahulu neighborhood.

Precinct 7 would be—and I suppose 21—7 and 21 would be McCully District.

9 and 10—I'm sorry; 9 only—9 and 20 would be Moiliili. [fol. 792] There appears to be no number in this precinct which is bound—which is on the Kokohead side of 19, and on the Ewa side of 6. Do you happen to know the number?

By Mr. Kanbara:

Q. Why don't you describe it?

A. The unnumbered precinct here, which is bounded on the makai side by King Street and Waialae Avenue; on the Kokohead side by—looks like the Palolo drainage canal and Manoa Stream; on the mauka side by Dole Street, University Avenue, and Metcalf; on the Ewa side by Isenberg Street and Wilder; that, together with 18 and 19, would be Bingham Tract—once referred to as "Chinese Hollywood."

The 6th precinct—Precinct No. 6 is St. Louis Heights.

There is an unnumbered precinct which contains Mid-Pacific Institute and the University of Hawaii. That, together with 4, 16, 15, and 17, would be Manoa Valley.

2 would be regarded as Punahou District.

13 would be Makiki.

1, Makiki Heights and Tantalus, Round Top. I believe that covers all of the natural areas or the neighborhoods in the 15th District.

Q. Mr. Schmitt, could you tell the Court the characteristics of the—or, the composition of the electorate, grouping, where feasible, the sub-districts that you've mentioned. For example, take Waikiki. That is what you might call [fol. 793] a distinct neighborhood.

A. Yes. Waikiki, as most persons know, is the center of tourism in Hawaii. The census excludes, of course, the non-resident population of Waikiki, which, at the height of the

tourist season, now runs to well over 15,000. However, there are about 12-, 13,000 permanent residents there. But when we speak of "permanent," this is by census definition. The permanence of the Waikiki resident is considerably less than that, say, of the Manoa resident. He is a short-term resident. There is a predominance of women. The population excludes virtually no one under the age of 20.

Occupationally, it's rather a middle and perhaps upper-middle group, with a large admixture of Armed Forces families; and is a very distinct geographic area, from a demographic, sociological point of view.

McCully and Moiliili have some of the—have a largely middle class and somewhat lower than middle class population; a very large number of children. Occupationally, many persons in, oh, say, skilled or clerical occupations; some semi-skilled; perhaps a few unskilled.

This is also true of Kapahulu.

Q. That is primarily, from an ethnic point of view, Oriental?

A. Yes. McCully and—in fact, according to census statistics, there is a belt that stretches from, roughly, Pensa- [fol. 794] cola Avenue over as far as Kapahulu, and into Kaimuki, for that matter, running, oh, just on the—along King Street, between King and Kapiolani—between Beretania and Kapiolani Boulevard and Harding; along in there; which had the highest proportion, at the last census, of Japanese population on the Island of Oahu. Whereas, Waikiki has a largely Caucasian population. Manoa, largely Caucasian, but with a growing admixture of Chinese and some Japanese.

Q. Proceeding to—can you group, say, Kapahulu, Bingham Tract, St. Louis Heights, Manoa?

A. Those tend to be—well, Kapahulu is more or less comparable to McCully and Moiliili, but with, ethnically, more Hawaiians and fewer orientals. But Bingham Tract, lower Manoa, St. Louis Heights—at least the lower regions of St. Louis Heights—have rather large proportions, as these things go, of Chinese, a fair number of Japanese,

some Hawaiians, some Caucasians. They are predominantly middle class; somewhat, perhaps, a little above middle class, with an average number of children, and a rather balanced sex ratio—that is, males per hundred females.

Q. How about occupationally?

A. They are the higher proportion of professionals and semi-professionals, managerial, but not a very exceptionally large proportion.

Q. Is there a section you might call "The University [fol. 795] Community"?

A. Yes. Around central Manoa, chiefly, where there is a very high proportion of University faculty and employees; some students. A relatively low proportion of young persons, other than the students; and one of the lowest sex ratios on Oahu; that is, males per hundred females. It's one of the few places on Oahu where women out-number men.

Q. Are there any other districts remaining that you might consider to constitute a distinct neighborhood?

A. Makiki Heights, Tantalus, has many of the same characteristics as upper and central Manoa, except that the densities, of course, are much lower—population density. Fewer persons per acre.

Q. Turning now, Mr. Schmitt, to an entirely different subject. On the matter of—have you had any experience in constructing or drafting apportionment plans? Have you had occasion to?

A. Yes. Yes, I have. My staff and I, several months ago, did prepare a redistricting plan based on 51 Representatives and 25 Senators, and total population as of 1960, using census tracts as the units for grouping.

Q. Now, that's—

Judge Pence: How many Senators?

The Witness: 25. The existing number, in other words.

[fol. 796] By Mr. Kanbara:

Q. That's one from each district?

A. That's right.

Q. 25 Senators; one from each district?

A. This was a one-person, one-district basis.

Q. Now, as far as census tracts are concerned, what sort of boundaries or monuments did you follow?

A. The Census Tract System, which has been used on the Mainland since 1910 and in Hawaii since 1940, consists of statistical areas of relatively homogeneous social, demographic and economic characteristics, bounded by easily-observed permanent-type features such as highways, railroads, major ridges, streams of—that is, large streams, and other features that an enumerator can easily observe in the field, and which very markedly distinguish one area from another. They average in population from 3- to 5,000.

Q. Are there any sub-districts within a census tract?

A. The Bureau of the Census has—uses as an administrative unit the Enumeration District. The Enumeration District consists of the area covered by a single enumerator, which averages about 800 in population. It supposedly follows equally well-observed physical boundaries, but these boundaries need not have any great significance in differentiating natural areas. That is, they are purely for administrative convenience.

Q. Now, in creating Senatorial and Representative Dis- [fol. 797] tricts, is it feasible to follow census tract boundaries as a starting point?

A. Not only feasible, but quite feasible and desirable.

Q. In other words,—and in certain instances, I suppose, there might be a necessity for following enumeration district boundaries—

A. Where the census tract boundaries were insufficiently detailed—that is, where the tracts were too large or unmanageable due to population growth, for example; or because they covered a rather large geographic area, it might be desirable to follow the enumeration district boundaries.

Q. That can be done without too much difficulty?

A. Yes, although not as easily as the tract boundaries.

Q. In arriving at an equitable apportionment plan?

A. That's right.

Q. Now, how about using precinct boundaries to work up an apportionment plan?

A. The difficulty with the precinct boundaries is that, after considerable work with these boundaries, I have concluded that they, in many cases, are not easily identified in the field. They violate boundaries used for other purposes. That is, there is no uniformity or unanimity in their use. They are not as clear, statistically, as they might be; and [fol. 798] are sometimes—the rationale for establishing them in their particular location is not always clear.

Q. In other words, in allocating population, for example, to a precinct, I take it that the precinct boundary lines in most instances do not coincide with census tract boundaries or enumeration district boundaries, or—

A. They seem to coincide with nothing else at all.

Q. I see. Is there much difficulty in estimating the population within a precinct?

A. For some precincts, no. For many, a great deal of difficulty. In fact, using the statistics—the 1960 census—even where available on a block basis, as they are for Honolulu and Hilo cities, there are many precincts which, because they go right down the middle of large blocks,—and Hawaii does have some large blocks because of its peculiar topography—it's impossible to make an accurate determination of the population of a given precinct.

Mr. Kanbara: I have no further questions.

Judge Pense: Mr. Dodge.

Cross examination.

By Mr. Dodge:

Q. Mr. Schmitt, you wouldn't have the difficulty—or, you don't run into the same difficulty, do you, when you determine your registered voter population within a precinct?

A. No, because voters are registered on a precinct basis.

[fol. 799] Mr. Dodge: No further questions.

Judge Pence: Mr. Padgett.

Cross examination.

By Mr. Padgett:

Q. Mr. Schmitt, have you seen the exhibit which was put in this morning, Exhibit 17? This is the one showing the Representative Districts and Senatorial Districts on the military reservations?

A. Yes. I have seen this map.

Q. I take it, from looking at that map, that there are areas on this Island, military reservations with a very heavy population?

A. There are, indeed.

Q. And that in such places, there may be almost no registered voters?

A. The number of—the percentage of registered voters would be quite low in some of these areas.

Q. It would be, if you were going on a single-member Representative District basis, reapportioning the State on that? It would be possible, would it not, for example, in the Hickam-Pearl Harbor area, to construct a Representative District which would have almost no voters?

A. That would be possible.

Mr. Padgett: I have no further questions.

[fol. 800] Judge Pence: Mr. Funaki.

Mr. Funaki: I have no questions.

Judge Pence: Any redirect?

Mr. Kanbara: No further questions.

Judge Pence: Any other questions of Mr. Schmitt?

Is Mr. Schmitt going to be called by any other attorney?

Thank you, Mr. Schmitt.

* * * * * * *

[fol. 801] EILEEN K. LOTA, a witness called in behalf of the Defendant, being duly sworn, testified as follows:

Direct examination.

By Mr. Dodge:

Q. Will you state your name, please?
A. Eileen K. Lota.
Q. And—

Judge Pence: One moment. The last name is spelled—
The Witness: L-o-t-a.

By Mr. Dodge (Continued):

Q. And what is your position, Mrs. Lota?
A. City Clerk for the City and County of Honolulu.

Judge Pence: Since recently.

By Mr. Dodge:

Q. How long have you had that position?
[fol. 802] A. January 2nd, 1965.
Q. Prior to that, were you in the—an officer of the Clerk's Office?
A. Yes. I was Deputy City Clerk for four years.
Q. Now, it is true, is it not, that the City Clerk—or, the City and County Clerk is a corresponding position to the County Clerks in the other Islands?
A. Yes, sir.
Q. And the County Clerks each have the responsibility for the administration of the election laws?
A. That's true.
Q. Particularly, the registration of voters?
A. Yes.
Q. What is the necessary qualification for a person to qualify to vote in Hawaii?
A. That he be a citizen of the United States by birth or naturalization; be 20 years of age on or before the day of election; be able to speak, read, and write the English or Hawaiian language; be a resident of the State for at least

one year, and three months in the particular Representative District where he resides;—

Judge Beeks: In addition to the one year, or part of it?

The Witness: Part of the one year. And if convicted [fol. 803] of a felony, be pardoned by the Governor.

Q. Our law provides that a person convicted of a felony has his voting rights taken away, and he must be pardoned in order to get them back?

A. That's true.

Q. Are you familiar with the procedures of the Clerk's Office, City and County of Honolulu, for registering voters?

A. Yes, I am.

Q. Would you describe briefly what that procedure is, as far as your own staff is concerned?

A. Any person qualified to and desiring to register may present himself at any time during business hours at the office of the City and County Clerk, then and there to be examined under oath as to his qualifications as an elector. Each applicant shall make and subscribe to an application in a form that I have with me.

Mr. Dodge: We will, I think— May it please the Court. I will offer these forms for the various Counties in evidence later.

A. (Continued) That about does it.

Q. Yes. In other words, your office is open how long? Over a period of a year. For how many days is it open for the registration of voters?

A. The registration is open—well, first of all, it is closed [fol. 804] 30 days before the primary election, and 10 days before the general election. Other than that, it is open all throughout the year for registration.

Q. Now, that is as far as your own staff in the Clerk's Office is concerned?

A. That's true.

Q. Now, is there a different procedure, or are there additional registrars at about election time?

A. Yes, Mr. Dodge. We have a number of volunteer registrars during an election time, in addition to our staff. As of June 1st of 1964, we had 200 volunteers that were placed throughout the Island of Oahu to make it convenient for the electors to register.

Q. Were they deputized so that they had authority to register voters?

A. Yes. Yes, they were.

Q. And how are they—how do you get these volunteers?

A. We had 75 volunteers from the Republican Party; 75 from the Democratic Party; we had 3 from the Koolauloa JC's; the Unions participated—8 from Unity House; UPW had 5; AFofL-CIO, 19; and the ILWU, 10.

Q. And is it your testimony that these volunteers work outside of the City Clerk's Office?

A. Yes, they do.

[fol. 805] Q. Where would I find a registrar? I mean, somebody who could register me, from one of these volunteers?

A. We had them located at various points throughout the Island of Oahu. And I would like to offer this for you, Mr. Dodge. (Indicating.)

Q. Is the location and the hours when somebody can register—is that made generally known throughout the community?

A. Yes, it is. Besides having this little bit of information that we distributed, we also had this printed in the daily newspapers.

Q. By public advertisements?

A. Yes.

Q. Showing you this "Registration Points of Oahu," who prepared that?

A. This was prepared by the Democratic Party of Hawaii.

Q. And was it generally circulated—

A. Yes, it was.

Q. —to your knowledge, throughout the community?

A. Yes, it was.

Mr. Dodge: I offer in evidence a folder entitled, "Registration Points on Oahu" as an exhibit for the defendant.

Judge Pence: What's the number, please?

The Clerk: Defendant's Exhibit B, Your Honor.

[fol. 806] Judge Pence: Defendant's Exhibit B. Any objection? There being none, the same is admitted as Defendant's Exhibit B.

(The document referred to was admitted in evidence as Defendant's Exhibit B.)

By Mr. Dodge:

Q. Now, did you have a stock of these forms, Defendant's Exhibit B, in your office for distribution?

A. Yes, we did, Mr. Dodge.

Q. And you also stated, I think, that in addition to this folder, there were public advertisements presenting the same or similar information to the voters?

A. The same information.

Q. And these were in the public newspapers?

A. That's right.

Q. And for how long a period prior to an election would you say that these deputy registrars are throughout the Island?

A. From about the 1st of June.

Q. Until the election, which is October and November?

A. Until October and November, yes.

Q. Now, Exhibit B here indicates that these are at fixed places throughout the Island, particular stores or locations?

A. Yes.

[fol. 807] Q. Is there any effort made by any of these deputy registrars to go and search out voters?

A. Yes. I must say that we are grateful for the volunteers from the Democratic Party because they went on a complete house-to-house canvassing, offering their services to register voters.

Q. And the same was true of other volunteer workers?

A. Yes; of all other volunteers.

Q. Is there any procedure set up for registering somebody who is not registered, but qualified; and yet is absent from Oahu?

A. Under Section 11-9 of our statutory laws, there is a form that we have, "Absentee Registration Procedures." This is used primarily by students who are at some learning institution on the Mainland, or military personnel. And we mail the forms to them; and they need, of course, to have three supporting affidavits attached to the forms, and presented back to our office. The forms have to be notarized.

Q. Now, does the procedure for registering qualified voters on Oahu include a procedure for registering those who may be in military service?

A. Yes. We have.

Q. And would you—is that procedure essentially the same for registering civilians?

A. The procedure, or the guidelines to registration of [fol. 808] military personnel is one whereby the military person must reside off of the military post or reservation for a period of one year, and in the Representative District for three months; and this is applicable to the same that we ask of any others that come in to register.

No. 2, he must indicate, on service or organization records, that Hawaii is his permanent domicile. The date when this indication is made counts toward the one-year resident requirement. Thus, if he makes his indication today, the period of fulfillment of the resident requirement starts from this date on.

At the time of applying for registration, he must produce a document or letter certifying (a) that his records indicate Hawaii as the permanent domicile, and date of this indication; (b) that he is permitted to live off base, and has lived off base at such an address for a period of time. And the dates, of course, we would like to have.

The above statements must be signed and certified by the Officer in Charge.

Q. Now, is it possible for a person in military service, or his adult dependents, to register with the deputy registrar in the outlying areas, if he has this information?

A. Because of the amount of controversy that went on in this past registration with regard to military, Mr. Hanapi, who was then the City Clerk, advised all of the [fol. 809] volunteer deputies that he would rather that the particular individual from the military come to our office to register, so that in the event there was any questions—any documents that were needed, we would try to take care of it right at the office.

Q. Now, does the City Clerk's Office ever have occasion to call upon a person not in military service for additional evidence of his qualifications as a voter?

A. Yes. There have been a few cases where the City Clerk has used his discretion on asking for additional information with regard to a registration of a particular elector.

Q. In general, would you say that the City and County of Honolulu makes every effort to encourage persons to register during elections?

A. Yes, I do. I'm very proud of the operation that we have had in the City Clerk's Office for these past four years that I have been there; and I assure you that every effort has been made to see that we can actually help the elector to become registered.

Q. Now, are you familiar, Mrs. Lota, with the registration procedures used by the Clerks of the neighboring Counties?

A. Yes, I am. And for the information of the Court, I took it upon myself to contact each of our neighbor island Clerks, and I've asked them to supply information with [fol. 810] regard to the procedure of voting on their particular island.

Q. You obtained from them the forms that they use, and a brief summary of their registration procedure?

A. That's right.

Q. Now, on these neighbor island counties, would you say that basically the same practice is followed by them? In other words, do they deputize volunteers during periods before elections?

A. Yes, they do.

Q. On the Island of Hawaii, for example—or the County of Hawaii—how many deputies do they have?

A. On the Island of Hawaii, Mrs. Kaawa, who is the County Clerk there, deputized 15 volunteers during the election. 50, excuse me. There were 50.

Q. 50. And how many on Maui?

A. On Maui, there were 100.

Q. And on Kauai?

A. 33.

Q. And these, as in the case of the City and County of Honolulu, were all in addition to the regular staff?

A. To their regular staff.

Mr. Dodge: If there is no objection, I would like to have a summary of the election registration procedures as shown by documents received from the County Clerk at Kauai, the County Clerk in Hawaii, and the County Clerk of Maui, [fol. 811] and the City and County Clerk of the City and County of Honolulu, together with the applicable registration forms that were used, offered in evidence.

Judge Pence: Do you want them as one, or separate?

Mr. Dodge: I think one would be sufficient, Your Honor.

Judge Pence: That would be Defendant's Exhibit C. Any objection? There being none, Defendant's Exhibit C is admitted in evidence.

(The documents referred to were received in evidence as Defendant's Exhibit C.)

By Mr. Dodge:

Q. One further question, Mrs. Lota. Does the office staff of the City Clerk's Office stay open more than the usual business hours?

A. Yes.

Q. Just prior to election?

A. Just prior to election.

Q. And what would that be?

A. Well, on the last night of registration, the office is open until midnight, preparing for the closing of the primary. And the same with the general.

Mr. Dodge: I have no further questions.

* * * * * * *

[fol. 812] Judge Beeks: So that notwithstanding the Con-
[fol. 813] stitutional provision in Hawaii, a person in the Armed Services may gain residence for the purpose of becoming an elector if he's lived here a year and has indicated his intention of—

The Witness: That's right.

Judge Pence: And lives off of the military base.

The Witness: And lives off of the military base.

Judge Pence: Or off of one of the military housings.

The Witness: Yes.

Judge Pence: Mr. Dodge, was there not—at the time of the many cases that were filed in late 1964, just prior to the election, filed by those in the military service—was there not a concerted effort made to determine how many who thought themselves eligible should apply, should register for determination? Wasn't there—as I recall it, wasn't there some sort of a move made at that time last year to give everyone who felt that they were eligible, no matter whether they lived off or on, to attempt to register?

Mr. Dodge: I'm sure that Mrs. Lota is familiar with the procedures that were undertaken; sort of a conditional registration, which I am sure she can explain.

Judge Pence: Well, let's have that, will you please, Mr. Dodge, and see what results came from it?

By Mr. Dodge:

Q. Following the preliminary determination, I believe,
[fol. 814] by one of the Federal Judges prior to the 1964 election, was there an effort made to see how many military persons were qualified to vote?

A. Yes.

Q. Will you explain what procedures you used?

Judge Pence: Excuse me. That was without reference to whether they lived on or off the base?

The Witness: Yes, that's true, Judge.

Judge Pence: Proceed.

A. This was two days before the closing of the registration for the general election, and volunteers went to the various military reservations to offer their services, to register people who desired to. We received 1,000 applications; and out of these 1,000, 300 were qualified. So then—

Judge Pence: Excuse me. When you use the term "qualified," you mean that 300 were qualified in every way except that they lived on the base, is that it?

The Witness: These 300 were qualified because they lived off of the military base. They were either—they were born here in Hawaii, a number of them; and their wives, also, following their domicile, were eligible. And they were those that were qualified because they came forth with the proper documents showing that their records indicated Hawaii to be their domicile.

By Mr. Dodge:

Q. One other question, Mrs. Lota. Prior to this two days [fol. 815] of effort—and not only volunteers took these, but weren't they doing the same registration at your office?

A. Yes.

Q. Now, prior to that 2-day period, was there publicity on what was required for a person in the military service to register?

A. Yes, there was. Yes, there was. And Mr. Sato, who is in charge of our Election Division, he took a great interest in this, and was in constant contact with the leaders of the military branches, offering his services in answering any questions that might come about with regard to who would be qualified. He got together with a number of them.

He made, even, forms available so that these people would be able to fill them out without too much problem.

Q. I don't know whether you have this figure, but you do not mean to indicate that 300 is all—is the total number of military—

A. No. The 300 I'm speaking of, Mr. Dodge, this was processed, and they were qualified within that last period of two days. Prior to that, there were a number that Mr. Sato, in our Election Division, processed. I don't have the figures now, however.

Q. But you have always registered military personnel who could show their qualifications to be voters?

[fol. 816] A. That's right. Definitely.

Judge Jertberg: The election with this publicity campaign which you mentioned, was it publicly announced that the adult dependents who lived off the base—of a serviceman who lived on the base—were not eligible?

The Witness: The publicity campaign actually just merely set the guidelines as I read them off. And it was the indication of Mr. Hanapi—he gave the release on this—that these people come into the office to actually get processed.

Judge Jertberg: What is the position of an adult dependent of a serviceman, other than the wife, who lives on the base but her supporter, so to speak, is on the base? In other words, take the case of a serviceman on the base who has a daughter 25 years old who is dependent upon him but who lives with her mother, we'll say, off the base. Is my question clear?

The Witness: It would be my presumption if she were an independent at 25 years of age, and has established Hawaii her own self as her domicile, would be eligible to vote.

Judge Jertberg: Just take the situation of a girl 25, who lives at home with her mother, off the base, entirely dependent for support on her father, who is stationed on a reservation. She comes in to vote—or, to register. Is

she permitted to register, or is she disqualified because her [fol. 817] father lives on the base?

The Witness: As long as she can show us that she is living off of the military base, has been a resident of Hawaii for one year, has lived in a Representative district for three months, and is of voting age, she would qualify to register.

Judge Jertberg: But her mother would not?

The Witness: Her mother would still have to follow the domicile of her husband.

* * * * * * *

[fol. 818] ROBERT SCHMITT, a witness recalled on behalf of the plaintiffs, resumed the witness stand, and testified as follows:

Direct examination.

By Mr. Tonaki:

Q. Mr. Schmitt, do you have data concerning the economic characteristics of military families in the State of Hawaii?

A. Yes, I have.

Q. What are your sources of information?

A. Well, first of all, publications of the Honolulu Redevelopment Agency, titled, "Redevelopment and Housing Research," for July 1963 and July 1964; the Department of Education, a report on the statistics of pupil membership and personnel, 1962-1963, the most recent one available; and the Department of Planning and Economic Development statistical report 20, dated July 27, 1964, in- [fol. 819] cluding an errata sheet dated November 6, 1964; the U. S. Census of Housing for 1960, Final Report HC(1-13), published by the Government Printing Office in 1961; the Annual Report of the Department of Health of the State of Hawaii for 1963, Statistical Supplement; information obtained from the Bank of Hawaii, which main-

tains statistics on military payroll, obtained from the Armed Forces; information from the Office of Business Economics' survey of current business for August, 1964; information obtained from the Department of Defense by the Department of Planning and Economic Development; and recently-released information from the 1963 Census of Business, Report BC-63 (A-R 13); and finally, some information from the Honolulu Police Department, 1960 Statistical Report.

Q. Did you participate in any of these surveys?

A. Yes. The Redevelopment Agency reports which I say here extensively were based on information supplied by me. I personally compiled from the Armed Forces a number of these estimates on military housing and characteristics of military households, the number of military personnel and dependents; and I am well acquainted with the way in which the other series were developed.

Q. How many military households are there in the State of Hawaii?

A. At the time of the most recent survey, October 1962, which covered the Island of Oahu, there were 23,900 house-[fol. 820] holds headed by a member of the Armed Forces, or 18.5 percent of the total number of households on this Island.

Judge Jertberg: What was that last figure?

The Witness: 18.5.

By Mr. Tonaki:

Q. Will you describe the characteristics of these military households, describing their spending habits, the attendance of their children in school, et cetera?

A. The average household size of the Armed Forces households was 3.99, slightly smaller than those of civilian households. 71½ percent of these military households have lived here longer than one year, and 11.4 percent have lived here longer than five years. Their median family income

was $4,777.00. 6.7 percent lived in their own homes; that is, they were owner-occupants.

Judge Pence: How many?

The Witness: 6.7. For civilians, it's 54.4. 32 percent of the military households were occupants of private rental housing. 14.8 percent of all private rental units were occupied by military households.

Judge Beeks: What was the last figure again?

The Witness: 14.8.

Judge Beeks: What was that?

The Witness: That is the private rental units on Oahu; 14.8 percent were occupied by military households.

[fol. 821] Judge Beeks: Of the total units?

The Witness: Of total private rental units. 56.6 percent of the military households lived in housing supplied by the Armed Forces; that is, on-base housing.

In April 1964, out of 192,580 housing units in the State of Hawaii, the number provided by the Armed Forces numbered 13,397, or 7.0 percent of the total. That included Wherry Act, Capehart Act, and other on-base housing.

In October 1962, the most recent year for which the statistics have been published,—I believe they've been compiled since then, however—the number of military children attending public schools was 23,026. That was 15.0 percent of all children attending public school.

Judge Pence: What percentage, again, please?

The Witness: 15.0. Roughly, one out of seven children in public school in October 1962 was a service child.

The number of military personnel and dependents on the most recent date, as you note from the report entered as evidence this morning, was 128,930. The number of military families—

Judge Pence: What does that 128,930 represent?

The Witness: That was members of the Armed Forces and their dependents domiciled in Hawaii. The number of military families—a family being defined somewhat differently from a household—was 21,631 as of July 1, 1964.

[fol. 822] On April 1, 1960, the census date, the number of persons living on military bases—this included both military and their dependents, and perhaps some civilian employees of the Armed Forces— the number of persons on base was 71,672 living in 13,238 housing units, plus a fairly large number living in barracks.

The Armed Forces accounted for 2.0 percent of all deaths occurring in the State. This was just to Armed Forces alone, not to their dependents.

Men in the Armed Forces fathered 28.2 percent of the children for which the father was known.

The members of the Armed Forces accounted for 24.9 percent of the marriages, and 15.9 percent of the divorces. These vital statistics are for 1963.

The payroll for members of the Armed Forces stationed in Hawaii was $149,000,000.00 in 1963, or 12.0 percent of the total wage and salary disbursements for the State.

Judge Pence: May I have that last figure?

The Witness: 12.0.

Judge Beeks: What was the amount?

The Witness: $149,000,000.00.

Judge Beeks: I didn't get that.

The Witness: $149,000,000.00. Post Exchanges, commissaries, and eating and drinking places operated by the Armed Forces had total retail sales of $84,693,000.00, or [fol. 823] 10.1 percent of all retail sales in the State.

177 Part 1 offenses cleared by arrest were members of the Armed Forces, and 1,049 Part 2 offenses, excluding traffic. This means that adult offenders—members of the armed forces—constituted 14.7 percent of Part 1 offenders and 10.0 percent of Part 2 offenders, of the total adult offenders apprehended.

That pretty well covers the available information on the economic and social impact of the Armed Forces in Hawaii.

Mr. Tonaki: No further questions.

Judge Pence: Mr. Kanbara, any questions?

Mr. Kanbara: No questions, Your Honor.

Judge Pence: Mr. Dodge?

Mr. Dodge: No questions.

Judge Pence: Mr. Padgett?

Mr. Padgett: No questions, Your Honor.

Judge Pence: Mr. Funaki?

Mr. Funaki: No questions, Your Honor.

Judge Beeks: The 10.1 percent of all retail sales, those are on strictly military stores, on military bases?

The Witness: That's right. Post Exchanges, commissaries, and eating and drinking places operated by the Armed Forces.

[fol. 824] Judge Beeks: But employing some civilian employees from the populace generally, I suppose?

The Witness: I assume they would.

Judge Pence: What, if you know, is the tax situation insofar as State income tax applying or not applying to military personnel, if you know?

The Witness: I'm not sure of the exact requirements on that.

Judge Pence: Do you know anything about the gross—excise taxes, that is—gross income taxes?

The Witness: Certainly any purchases made by a serviceman in the civilian community, he would pay the 3½ percent excise tax.

Judge Pence: How about the different side of the same coin; namely, the sales in the PX—in the exchanges, and so on?

The Witness: I believe those are exempt, but I'm not sure.

Judge Pence: Don't look at me. I was just asking a question.

I have no other questions. Any questions from any counsel?

Thank you very much, Mr. Schmitt.

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[fol. 825]

Excerpts From Transcript of Proceedings— April 15 and 16, 1965

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INQUIRY BY JUDGE PENCE AND RESPONSE OF MR. KANBARA

Judge Pence: The Court has determined that in order that this may move along with the greatest speed and justice, that those parties, those attorneys who represent parties in favor of the plan of the Legislature as submitted, will identify themselves, and those who are opposed to the plan will likewise identify themselves. And then we will permit the proponents to state their position and the reasons for the same. Beginning at the left over there with Mr. Tonaki, what is the position, if you care to state it, for yourself and your clients?

* * * * * * *

[fol. 826] Mr. Kanbara: Representing the Governor, we would oppose the plan.

* * * * * * *

[fol. 827] OFFERS IN EVIDENCE

Judge Pence: Excuse me, Mr. Kimura, do any of the Counsel here have any objection to that card entitled "Proposed Senatorial Districts" being introduced in and received in evidence?

Mr. Dodge: No, I have no objection.

Judge Pence: Any objection? There being none, it will be marked as—

Mr. Kimura: They were all pre-marked, your Honor.

Judge Pence: —as Senate Exhibit 8. The same is received in evidence.

(The chart referred to was received in evidence as Senate Exhibit 8.)

Judge Pence: Proceed. Continue with Senate Exhibit 8.

Mr. Kimura: Yes, your Honor. The number of Senators allocated to each of these districts listed under the heading of "Number of Senators," the 1st having 3; the 2nd, 2; [fol. 828] the 3rd, 3; the 4th, 4; and 4 here, and with Kauai, the 8th Senatorial District, having 1; totaling 25. This number 25 is retained in the present number under our State Constitution.

The registered voters, 1964 registered voters, as we have it, are listed and are in line with the district allocations, totaling 239,361.

We shall subsequently, your Honor, establish these figures as being the authentic figures for 1960 for the registered voters by witnesses whom we will put on the stand.

This, in essence, are the proposed senatorial districts incorporated, and the provisional plan as well as the plan calling for the constitutional amendment. We will establish through our witnesses to show that the districting—

Judge Pence: You are now referring to what?

Mr. Kimura: Yes, your Honor, referring to Exhibit S-5 marked for identification.

Judge Pence: Is there any objection to the introduction of Exhibit 5 into evidence at this time?

Mr. Dodge: No, your Honor.

Judge Pence: There being none, Senate Exhibit 5 may be received in evidence.

(The chart referred to was received in evidence as Senate Exhibit No. 5.)

Judge Pence: The same being a map, purporting to [fol. 829] be a map of—

Mr. Kimura: The Island of Oahu.

Judge Pence: The entire island?

Mr. Kimura: This is the entire Island of Oahu.

Judge Pence: And is this 5 that you are pointing to?

Mr. Kimura: This is 6, your Honor.

Judge Pence: 5 is the windward, the leeward side?

Mr. Kimura: No, your Honor. This is downtown Honolulu.

Judge Pence: Downtown Honolulu?

Mr. Kimura: Yes, your Honor.

Judge Pence: And it will be the 4th, 5th, 6th and 7th?

Mr. Kimura: 4th, 5th, 6th and 7th Senatorial Districts.

Judge Pence: All right. It is received in evidence. Now, the next little map.

Mr. Kimura: The next map showing the plan of Oahu, marked as Exhibit 6, your Honor.

Judge Pence: Any objection to the admission of Exhibit 6, Senate Exhibit 6, into evidence, the same being a map of the Island of Oahu?

Mr. Dodge: No objection.

Judge Pence: There being no objection, the same is [fol. 830] received in evidence.

(The map referred to was received in evidence as Senate Exhibit No. 6.)

Mr. Kimura: And this exhibit here, showing the Island of Hawaii, is marked as 7. I would like to have that introduced in evidence.

Judge Pence: Any objection? There being none, Senate Exhibit No. 7, purporting to be a map of the Island of Hawaii, is received in evidence.

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Sakae Takahashi, a witness called by the Intervenor-Plaintiffs, being duly sworn, testified as follows:

[fol. 831] Direct examination.

By Mr. Kimura:

Q. Will you state your name, please?

A. Sakae Takahashi.

Q. And, Senator Takahashi, you are a member of the State Legislature?

A. That is correct.

Q. And you are a State Senator from the present 5th Senatorial District, are you not?

A. Yes.

Q. And what position do you hold in the State Senate?

A. I am Vice President of the Senate and Chairman of the Senate Judiciary Committee.

Q. And you are also, are you not, the Chairman of the Conference Committee?

A. Yes.

Q. In which the bills which are pertinent in this case came up for consideration?

A. Yes.

Q. Now, as Chairman of the Judiciary Committee and Chairman of the Senate Conference Committee, you are familiar, are you not, with House Bill No. 987, Senate Draft 1, Conference Draft 1, and House Bill No. 773, Senate Draft 1, Conference Draft 1?

A. Yes.

• • • • • • •

[fol. 832] Mr. Kimura: Will you proceed?

The Witness: Will you repeat the question?

Mr. Kimura: Yes.

By Mr. Kimura:

Q. The question is, will you state to the Court the background with respect to this problem, the problem faced by the Legislature, and the problems that were encountered in the working out of the plan and your reasons in coming out with it at this particular time?

A. Well, with respect to the background, I think that the Legislature has been confronted with this particular problem ever since the decision of the Supreme Court in June of last year. I am sure that this Court is well aware of the fact that there was a special session called and—

Judge Pence: We are familiar with the background. Just take up what the problems were, to which Counsel has directed your attention, in connection with these specific bills in the—let's call it the latest go around.

The Witness: Yes, your Honor.

A. (Continuing) The Senate and the House Conferees were appointed by the respective Speaker and President of the Senate, and the conferees who were also called the managers part of the House and part of the Senate, met, and the first thing we did was to appoint someone to act as Chairman. I happened to be the one delegated the job [fol. 833] of Chairman of the Conference Committee. And the first question which was posed to the members of the Conference was, what are we going to do with the advisory memorandum of Judge Beeks, joined in by Judge Jertberg and Judge Pence?

We deliberated on that particular problem for some time and came to the conclusion—we took your memorandum very seriously, Judge, realizing that, although it was an advisory opinion—

Judge Pence: A memorandum, not an opinion.

A. (Continuing) —a memorandum, and I think all of the members of the Committee respected this advice of the Court—however, the Committee came to the decision that this is not the kind of reapportionment plan we would want. First of all,—

Judge Pence: When you use the term "we," just whom are you talking about?

The Witness: Well, I think I talk for every member of the Conference Committee from the House and Senate.

Judge Pence: Do I understand when you use the term "we," you are purely subjective? In other words, what was going to be good and what we want, meaning you, the members of the Conference Committee, and purely subjective?

The Witness: Yes.

Judge Pence: That is the real justification—

The Witness: However, being interested in self-preser- [fol. 834] vation, I think that the members of the Conference Committee, many of them, were there to do a good job. They were determined to come out with a fair, reasonably equitable reapportionment plan. Many of them, I think, realized that they were going to vote themselves

out of existence. There were conferees on the Committee who were from neighbor islands, considering these factors.

Judge Pence: One moment. Which member of the Conference Committee from the Senate would, under the plan submitted, be voting himself out of existence?

The Witness: Well, I would say that on the Island of Hawaii, Senator Ushijima possibly might be voting himself out of existence.

Judge Pence: Now, if you had said Senator Yates or Senator Kinney had been on there and had willingly dropped one Senator from West Hawaii, I would observe that there would be more foundation of fact to your conclusion, to your conclusionary statement.

The Witness: I stand corrected. I don't think that any man's position is safe, especially coming from a district where the number 7 at the present time would be reduced to 3. You would stand a chance of losing your seat.

Judge Pence: Well, I understand from the first and second go-around that it was understood that the Island of Hawaii would lose 4. That was automatic.

[fol. 835] The Witness: Yes.

Judge Pence: As soon as we declared the Senate unconstitutional. Proceed, though.

The Witness: I might say, if the Court please, that one of the reasons for the Conference Committee to vote against the plan calling for single member districts, was the fact that the Senate here, as well as in the United States, in the States of the Union, has traditionally been a body made up of people from larger districts.

Judge Beeks: I take it from your testimony, Senator, and from the report which has been submitted, that you basically feel that where you are going to have the smaller single member districts that are closer to the people, it ought to be in the House of the Legislature that is more responsible to the people by having a shorter term. In other words, the House against the Senate.

The Witness: This is the position that we took, at least the members of the Senate Conferees took, and there was no objection raised by the House Conferees.

Judge Pence: Were there any suggestions that perhaps the proposed constitutional amendment should provide for a complete redistricting of the House to make the House single member district? Was that ever discussed?

The Witness: That was never discussed.

Judge Pence: So the representative area of those mem-
[fol. 836] bers of the House in the Conference Committee was not in danger?

The Witness: No.

Judge Pence: You answered that question. They made no objection?

The Witness: No.

Judge Pence: But you mentioned just a moment ago about one of the facts that led you to the ultimate plan here was that the United States Senate is made up of the idea of representing larger districts.

The Witness: No, your Honor.

Judge Pence: What I had in mind was, that there are only two United States Senators from every State.

The Witness: I did not make reference to the United States Senate, your Honor. I made reference to the Senates of the various States, or the upper house of the various State legislatures.

Judge Pence: Proceed.

The Witness: Then we proceeded on the basis of whether we should try to establish a two-member district plan. And for the same reasons, including one other reason which I did not mention earlier, the fact that smaller districts would tend to establish what one described as peanut politics.

Judge Pence: Then by that, coming back again, you would say that the United States Senators, because they
[fol. 837] have only two in a State, spread completely across the United States, are more prone to go into peanut politics?

The Witness: No, sir.

Judge Pence: Wherein lies the difference? Tell me.

The Witness: The United States Senator today represents the entire State.

Judge Pence: Well, is there anything wrong with that?

The Witness: There is nothing wrong with that, your Honor.

Judge Pence: Proceed.

The Witness: What I am trying to say is that if a Senator represents a small district, he would tend to be very localized in his thinking. And that is what I meant when I referred to peanut politics.

Judge Beeks: Well, on the other hand, when you take a situation like your 6th Senatorial District, made up of quite a number of representative districts,—I think on 1, 2, 3, 4, 5, 6, 7, 8—that one and the 15th having 31,000 population against 1,679, the highest population in any of them, you end up with a sort of reverse peanut political situation, don't you, where they are all going to come from that one district and the others are going to get very little representation?

[fol. 838] The Witness: I don't disagree with the Court. Personally, I believe that the 15th District is too large a district for a representative district, at this point. But I think the larger Oahu districts—it is my feeling, not the feeling of the Conference Committee—the larger districts ought to be broken up.

Judge Jertberg: To what extent is the thinking, at least of the Senate Conferees, influenced by the fact that there were multiple representatives in the lower House?

The Witness: I can't answer that, your Honor, because that problem was never discussed. The only position that we took is that there was nothing wrong with having multimember districts in the Senate and multimember districts in the House.

Judge Jertberg: Was this a general feeling, that a Senator should represent a larger district, at least a district of more population than a member of the lower House?

The Witness: That's right. That was the prevailing feeling in the conference. I don't believe anybody objected to that type of thinking. It was very thoroughly discussed. That is what happened at the conference. Then we went

into the so-called three-member district plans and the four-member district plans. And that evening we called it quits. Before we quit, we agreed that the Senate and the House will bring forth to the next meeting of the conferees pro- [fol. 839] posals for the establishment of three-member districts and four-member districts, and at the next meeting these proposals were submitted. In fact, the 5-member district plan was also discussed but after some objection from some of the Senators the five-member district plan was totally dropped, the objection being that having five Senators in one district out of a total of twenty-five makes up 20 percent of the composition of the Senate, and we felt that the Senate composition is too high. So we came back to a discussion of the 3-member district plan and 4-member district plan.

At one point the argument was raised that on the Island of Oahu especially, if we follow traditional lines or well-established geographic lines, the representative districts and the senatorial districts would be bounded by the same boundaries. We were specifically referring to the 15th Representative District and the 8th Representative District. And we felt that this kind of a plan is objectionable because having Senators and Representatives come out of the same geographic area bounded by the same boundaries would not be right. We thought we should go one step higher and go into the 4-member district category, where we reached a combination where there will be only one district on Oahu with overlapping boundaries. And this happened to be the 8th Representative District. And it is logical in my thinking and I think in the thinking of the members of the Committee that the 8th Representative District be one district [fol. 840] because they are bounded by this Koolau Range.

By Mr. Kimura:

Q. If I may interrupt one moment, by the 8th Representative District on the Island of Oahu, you are referring to the so-called windward side of Oahu, as shown on Exhibit

6, as set off by this red line following the ridge line of the Koolau Range, is that correct?

A. That's correct.

Q. This is the 3rd Senatorial District having a total population of 27,073 registered voters in a location of 3 Senators?

A. That's right. And this is all on one side of the Koolau Range on the other side of the island. We felt that there was ample justification to keep that particular district separate and, although the boundaries of the representative districts are the same, it would be the senatorial district and there was ample justification to keep it simply that way.

Then we agreed to combine the 8th and 9th—excuse me—the 9th and 10th Districts, the 11th, 12th and 13th and a portion of the 14th Districts, a portion of the 15th District, a portion of the 14th District and 15th Districts and 16th and 17th Districts. Every one of these districts would have four Senators except the 8th or the 3rd Senatorial District, which is on the other side of the island.

Then we went about getting figures to see whether the [fol. 841] figures come out as equal as possible. We were striving to reach an average of 38,000 voters per district, 38,000 voters per district, 4-member districts.

This is the result of our efforts. I know there are some objections and there were some objections after the plan was adopted because we did do some shifting of precincts. But the shifting followed a logical pattern. We shifted, for instance, the 1st and 8th Precincts. We shifted the 1st and 8th Precincts of the 11th District and combined it with the rest of the 10th Representative District.

Q. In other words, this line as shown on Exhibit 5, as I pointed down along this red line, has the boundaries between the 4th and 5th Senatorial Districts, and then the proposed 4th Senatorial District has two precincts of the 11th Representative District, to wit, the 1st and the 8th Precincts of the 11th Representative District?

A. That's right. I might add there, that we found it to be logical to transfer these two precincts to the 4th Sena-

torial District because the areas involved are characteristic of the entire 10th District, 10th Representative District. It is not in a solidly urban area. It is separated by a very marked Middle Street, which is a very distinct line of separation. And it just happens that the figures, we feel, are right in accord with what we were trying to accomplish.

I might add that the 4th Senatorial District is one of the [fol. 842] fastest-growing areas in Honolulu today. I think there are more subdivisions registered in that area than any other particular district on the Island of Oahu.

We did also divide the 14th District into two parts, the northern part of the divided 14th District is joined with the 12th, 13th and 11th, a part of the 11th, to make up the 5th Senatorial District. Here again the line of demarcation follows well-established lines. And we felt that this is a good separation and the Committee adopted that particular plan.

The remaining precincts in the 14th District were added to the 15th to make up the 6th Senatorial District.

The figures here, I think, fell a little high but actually we felt it was not too bad, considering the fact that 38,000 was the average that we were trying to strive for.

Judge Pence: Is it the fact that the three Senators in the 10th, who presently come from this District, have nothing to do with that alignment?

The Witness: No, I don't believe we consider the election possibilities of any of the members of the Senate prejudiced that.

By Mr. Kimura:

Q. I might point out again and refer to Exhibit 5 and show you the Ewa boundaries for the so-called west boundary of the proposed 6th Senatorial District and direct your attention to proceed towards the Koolau Range towards the sea—this being the mountains, this being the sea—that [fol. 843] it deviates from the boundary of the 15th Representative District by actually taking in a chunk of the

14th Representative District, it takes in about six or seven such precincts; whereas the representative district follows and turns to the Diamond Head direction in this fashion, does it not? (Indicating on chart)

A. Yes.

Judge Pence: As shown on the heavy black line?

The Witness: That's right.

Judge Pence: On Exhibit No. 6, is that it?

Mr. Kimura: No. 5.

Q. And the basic reason for the addition of this area, which is contiguous to the 15th Representative District in part, well, in a large part was prompted because of its contiguity or joining physical location, coupled with the attempt to increase the population size of the 15th to be approximately equal with the other senatorial districts, is that right?

A. That's right.

Judge Pence: Senator Takahashi, there is something I wondered about, and so that we may know the answer, that is, in the 15th Representative District from which three Senators are now in the Senate elected,—and I don't mean to be prejudicial—but they just happen to live there, and how far apart do they live? Can you show it on the map, [fol. 844] approximately, where their residence is? Can you show it, Mr. Kimura?

Mr. Kimura: I am not familiar with that.

Judge Pence: Can you, Mr. Takahashi?

Mr. Kimura: I have a red pencil and can mark it on here.

Judge Pence: All right.

The Witness: Senator Esposito lives—

Judge Pence: Let's put a red "E" about where you say he lives, approximately.

The Witness: I think some place in here. (Indicating)

Judge Pence: Put a red "E."

(Mr. Kimura marks on map.)

That's it. Approximately. All right.

The Witness: And Senator Porteus lives on Manoa Road and I am not sure where he lives.

Judge Pence: Put a red "P" on there. Put a red "P" right there.

(Mr. Kimura marks on map.)

The Witness: And Senator Fukushima lives in that vicinity. (Indicating)

Judge Pence: Put an "F" right there.

(Mr. Kimura marks on map.)

Judge Pence: Thank you very much. Proceed, Mr. Kimura.

[fol. 845] The Witness: After we determined that we were going to establish a districting plan made up of at least the highest number in one particular district, being four, then we also agreed to combine the 1st and the 2nd Senatorial, the present 1st and 2nd Senatorial Districts on the Island of Hawaii. This was done with the idea that whenever possible within any senatorial district, you should try to, within a basic area where a senatorial district is located, we should try to equalize it. We did this by combining the 1st and 2nd Districts on the Island of Hawaii, a district which under the proposed plan calls for 3 senators.

By Mr. Kimura:

Q. Senator Takahashi, if I may interrupt, I am referring now to Exhibit 7, which purports to show the map of the Island of Hawaii. And the heavy black line that I am following with this red pencil on the northern tip and southern tip, essentially the present boundary lines for the two senatorial districts on the Island of Hawaii.

A. Right.

Q. And under this plan you seek to consolidate the Island of Hawaii, the County of Hawaii, into one senatorial district, the 1st with 3 senators, is that right?

A. Yes.

Q. Which has a registered-voter population of 28,130?

A. Yes. I might also say that at the present time I consider the Island of Hawaii pretty badly malapportioned [fol. 846] as far as the Senate is concerned. The 2nd Senatorial District only has 7,000 voters, the average—

Judge Pence: You mean if only one were given to, let's say, the present senatorial, the 2nd Senatorial District that you now emphasize, that would only be 7,000?

The Witness: That's right, approximately 7,000, correct.

Judge Pence: And the mean figure that you have come up with on the State is what?

The Witness: 9,350.

Judge Pence: 7,000, however, falls, does it, within the generally accepted, it shows under the theory of equal proportions or would the 7,000 not be—

The Witness: It is pretty much on the border line, I think.

Judge Pence: We will have Mr. Schmitt to testify to that.

The Witness: Yes. There wasn't too much discussion on this particular districting plan, that is, districting of the Island of Hawaii.

Judge Pence: When you say there wasn't too much discussion, who were the members from the Island of Hawaii on the Conference Committee?

The Witness: On the Senate, Senator Ushijima—

Judge Pence: Neither one of the senators from West [fol. 847] Hawaii, I take it, was present?

The Witness: None of them were. But, well, in conferences sometimes you reach agreement by silence. If a plan is brought up and nobody objects, there is agreement. If there is objection, then there is a thorough discussion of that particular point. But in this particular plan, there wasn't much discussion on the combination of the 1st and 2nd Districts.

Judge Pence: Was there one time when the entire island was one senatorial district?

The Witness: I was aware of that point but it wasn't discussed. In fact, Doc Hill—

Judge Pence: He is one of the senators also.

The Witness: —he used to tell that it took him about a week to get around the island. It is a large district. And—

Judge Pence: Proceed.

The Witness: Thereafter, after we made the necessary adjustments to try to equalize the figures, the House and Senate Conferees agreed to the plan and, accordingly, we prepared the Conference Committee Report and presented it to the respective body.

That, in summary, is what happened in the Conference Committee. After that, the House voted on it. When I speak of the reapportionment plan, I refer to both the [fol. 848] temporary, provisional plan, and the constitutional amendment plan.

The House Committee Report we did also. We passed the bill, both bills, by a 1-vote margin, 13 to 12.

Judge Pence: That is in the Senate?

The Witness: That's right. Then we had a motion to reconsider, because we were informed or some of us were under the impression that unless we had a two-third vote, this matter would not even be entertained by the Court. So on a motion to reconsider, we took another vote, and there was one switch. We gained another one so that the vote stood at 13 to 12.

Judge Beeks: What was the minority view? Did they want larger districts or smaller ones in the number of members, or was there—

The Witness: The minority view, I think, as expressed by some, that the whole thing should go to a Constitutional Convention.

Judge Pence: The whole thing should go to the Constitutional Convention?

The Witness: That's right.

Judge Pence: Senator Doi was one of the most outspoken proponents of that?

The Witness: Yes.

Senator Doi: I would be very happy to testify as to my thoughts on this question.

[fol. 849] Judge Pence: Thank you. If the Court feels it necessary, we will call on you. Proceed.

The Witness: That is it. And after the vote was taken, we instructed the attorneys to proceed and to present the plan to the Court.

By Mr. Kimura:

Q. Was there an indication, Senator, expressed by members of the Senate that in the event the Court should look favorably on the plan as proposed, that a two-third vote in the Senate is a likely prospect?

A. Well, on a motion to reconsider, we did individually poll the Senators and found at least 16 of the 25 Senators would vote for the plan. And on a vote it finally ended up 13 to 12, and this is part of the politics and we tried to get as many votes as possible and when we found out that we could not get the 17 votes after the poll was carefully taken, we did release two of the Senators who had committed themselves to vote for the plan. Had we gotten another one, we could have gotten 17 votes. We did not get 17 votes so we released this commitment to us of those who wanted to vote but didn't want to vote for the plan otherwise—

Q. The number 17 is the number that is the line of demarcation as far as the two-thirds vote of the Senate?

A. That's right.

Q. Is there anything else, Senator, that you feel germane or pertinent to the plan that you would like to state to the [fol. 850] Court?

A. Well, I personally like the plan.

Judge Pence: Senator, your own personal preference is not justification, so if that is all you can say to assist the Court, we will pass that by.

The Witness: Thank you.

Judge Pence: Excuse me, Senator, not that we don't respect your opinion. However, that is not what is before us.

Judge Beeks: It may be persuasive in getting that other vote.

The Witness: I think it may be.

Judge Pence: You have no other questions at this time?

Mr. Kimura: No.

Judge Pence: We are going to take a ten-minute recess.

(A recess was taken.)

AFTER RECESS

Judge Pence: Mr. Dodge,—and that applies to any other Counsel of record here—do you have any desire to ask any questions of the Senator? That is, without waiving your position.

Mr. Dodge: I would like to refer to the Attorney General's Office first. I may not have any questions.

Judge Pence: Does the Attorney General have any ques-[fol. 851] tions?

Mr. Tonaki: Yes, sir.

Judge Pence: Senator Takahashi, will you resume the stand?

Cross examination.

By Mr. Kanbara:

Q. Senator, referring to Senate Exhibit No. 7, showing the Island of Hawaii, is it true that the area shown as the 5th Representative District and the 4th Representative District, which constitute the existing 2nd Senatorial District has a population of 7,360? I am reading from the 1964 voter registration, registered voters—

A. I don't know exactly. I was talking in terms of registered voters.

Q. I'm sorry. I meant registered voters instead of population.

A. Well, roughly, that is the figure that I recall now. I don't know exactly.

Q. And for the 1st Senatorial District, that is, the existing senatorial district, which takes in the rest of the island,

as indicated on this exhibit, the registered-voter population is 20,770, that is, in 1964?

A. Yes, as I recall.

Q. Of which 15,289 are in the 2nd Representative District which takes in the City of Hilo, is that correct?

[fol. 852] A. I don't know. We never got down to that fine detail or discussion.

Q. And the 1st and 2nd Senatorial Districts are separated by a flow of lava, lava flows and mountains?

A. As I understand, yes.

Q. Going now to Exhibit No. 5, you indicated in your direct testimony that 3 of the senators from the 4th Senatorial District live in the same 15th Representative District. Could you please, Senator, for the Court indicate similarly for the present 5th Senatorial District the residence of those senators that are in the representative districts?

A. Let's see, now. You are referring to the 12th Senatorial?

Judge Pence: The 12th, the 12th Representative District, 5th Senatorial.

A. Senator Ariyoshi, I believe, lives here.

Q. Indicate it by an "A."

A. Senator Kido is registered at Kuakini Street. (Indicating on map)

Q. Senator Kido's place of registration is indicated by a "K." And Senator Takahashi is indicated by a "T."

A. By a "T."

Q. The 12th District.

Judge Pence: All of these marks are made on Senate Exhibit 5.

[fol. 853] Mr. Kanbara: That is correct, your Honor. I am sorry.

Q. Senator, could we indicate also the residence of the other two district senators?

A. I am not quite sure where Senator Pryor lives. I think it is in Waimanalo.

Q. That is indicated by what?
A. "P."
Q. And Senator Hulten is in Kailua?
A. Kailua.
Q. Senator Hulten's residence is indicated by an "H" in the representative district.

Judge Pence: The Court will take judicial notice of the fact that Senator Pryor was an appointee and not elected.
Mr. Kimura: That is correct.

Q. Now, Senator, you mentioned in your direct testimony that the average number of registered voters represented by a senator is approximately 9,300, is that correct?
A. I have seen the figure 9,500, 9,300, yes.
Q. And the 12th Representative District has a 1964 registered-voter population of 11,500?
A. I think you are right.
Q. So on that basis, if the 12th District were left as one senatorial district, it doesn't mean that the district would [fol. 854] get one senator?
A. I presume so.
Q. And if you combined the 13th Representative District, according to the 1964 registration, in other words, if you combine the registered-voter population in the 12th and 13th Districts, we would have a total of 17,956 registered voters, approximately. And on the basis, say, roughly 9,300 registered voters per senator, that would mean that that combined district would be entitled to two senators?
A. Two senators, yes.
Q. And the 12th and 13th run from the mountains to the sea, do they not? Now, the 14th Representative District, according to my figures from the Lieutenant Governor's Office, has a registered-voter population of 18,571. That is correct, is it not?
A. I am using the same figures. You are right. The Lieutenant Governor's figures, if they are right, I assume it is correct.
Q. So that if we were to combine the 12th and 14th Representative Districts, we would have 11,500 from the 12th Dis-

trict plus 18,571 from the 14th District, which would give a grand total of 30,011 registered voters, which would then mean on the basis of roughly 9,300?

A. Three senators.

Q. Three senators?

[fol. 855] A. Yes.

Q. Would you say that the make-up of the population in the 12th and 14th Districts are somewhat similar in the sense of taking in, shall we say, the upper middle class residents of the City?

A. I think you are under the impression that that is true —maybe 20 years ago. But the complexity of the area is changing very rapidly. I think that is a matter of conjecture. I think it is changing.

Judge Pence: You think what?

The Witness: I think it is rapidly changing.

Judge Pence: Instead of being upper middle class, what would you say?

The Witness: It is an average urban community.

Judge Pence: Is that middle class, whatever that might mean?

The Witness: It is below upper middle class.

By Mr. Kanbara:

Q. And you mentioned in your direct testimony, Senator, —and is it correct?—that the conferees did not consider the composition or possibility of a constitutional amendment to reapportion and to redistrict the House of Representatives at the same time as that of the Senate?

A. No, because the conferees were not given the task of dividing the particular question. We were there to deter-

[fol. 856] mine the district boundaries of these basic areas, senatorial district areas.

Mr. Kanbara: I have no further questions.

Judge Beeks: Was it discussed at all, Senator, in connection with your approval of this bill, if the House of Representatives should be redistricted?

The Witness: If there was any discussion, I think the feeling was that the House districting plan would be left alone. The Court found it valid and has the extent in the report in which it was discussed.

Judge Beeks: Speaking solely for myself, I am beginning to have great doubts as to whether we were right in the first place.

Mr. Kanbara: I have no further questions. Thank you.

Judge Pence: Mr. Dodge?

By Mr. Dodge:

Q. Senator Takahashi, you have identified all five of the Senators in the present 5th District—three of them in the present 4th District. Would you, to bring us up to date, put the other two senators in the 4th District on there?

A. Senator Kahanamoku lives on Maunalani Heights. I think she lives some place up here. (Indicating on map)

Judge Pence: Put a "K" up there on Exhibit No. 5. That is in the 16th.

[fol. 857] The Witness: And Senator Yano is right above St. Louis High School.

Judge Jertberg: What initial did you designate for that?

Judge Pence: "Y."

Mr. Dodge: With a "Y."

Judge Jertberg: That is Exhibit 7?

Judge Pence: No, Exhibit 5, in the 16th.

By Mr. Dodge:

Q. How many conferees were there in the Conference Committee from the Senate?

A. From the Senate there were seven members.

Q. I don't know whether this makes any difference but I think we ought to have it in the record: What were their political party affiliations, of the seven? How was it divided?

A. Well, Senator Esposito is a Democrat. Senator Fukushima, a Republican. Senator Kido, a Democrat. Ushijima,

Democrat. Yoshinaga, Democrat. Yates, Republican, and myself, Democrat. It is 5 to 2.

Q. There were two Republicans and five Democrats?

A. Democrats.

Q. Do you know the political party affiliation of the members from the House?

A. Yes, Representative Wakatsuki, Chairman. He is a Democrat. Representative Tadao Beppu, Democrat. Repre-
[fol. 858] sentative James Clark, Republican. Representative George Loo, Democrat. Representative Barney Menor, Democrat. Representative Katsugo Niho, Republican. Representative George Okano, Democrat. Representative Robert C. Oshiro, Democrat. Representative Frederick Rohlfing, Republican. Pacarro, Democrat.

Q. Ten members, am I right, of the House?

A. That's right. The make-up was 7 Democrats, 3 Republicans.

Q. Three Republicans? Do you happen to know the political breakdown of the 13-12 vote in the Senate?

A. Let me say this: All in the first vote which was taken on House Bill 773—

Judge Pence: I think, Senator, we are concerned with the final vote.

The Witness: All right. The final vote, 9 Republicans voted against the bill; 2 Democrats voted against the bill.

Q. Two or three Democrats voting against it?

A. Three Democrats.

Q. And the other 13 who voted for it were Democrats?

A. That's right.

Q. So there are 16 Democrats in the Senate and 9 Republicans? Now, you are aware, aren't you, Senator, of the purpose of their being two bills to submit to this Court?

A. Yes.

[fol. 859] Q. One, a provisional one and one proposing a constitutional amendment?

A. Yes.

Q. The purpose of the provisional bill or the reason for that being that the Legislature itself has no authority to reapportion the Senate?

A. I don't quite agree with you on that.

Judge Pence: Have you been advised that way, at least?

Q. Have you been advised by our State Supreme Court and this Court has held, one, in this hearing and one in an earlier proceeding, one in the State Supreme Court—I will put it that way—that the Senate could be reapportioned under the State Constitution only by constitutional amendment?

A. I have heard views on this particular subject, the view that it can only be done by a constitutional convention or a constitutional amendment. Others take the contrary view.

Q. Well, assuming that it can be done only by constitutional amendment and that that is the position this Court is taking, is it not true that the purpose of the two bills, the two bills that the Legislature was asked to submit to the Court, one, a provisional one and one a constitutional amendment, were two separate things, one a provisional thing for the Court to put into effect as a court order,—

A. Yes.

[fol. 860] Q. —and that there was, therefore, no necessary relationship between this intermediate step for the 1966 election and on permanent plans which would be placed into effect by a constitutional amendment? Were you aware of this in your determination?

A. I am not quite sure what you are driving at.

Q. Well, were you aware of the fact in your determination as a conferee that the Legislature submitted to this Court, as far as a provisional apportionment plan is concerned, that it could be completely different from what you might submit to the Court in terms of a proposed constitutional amendment?

A. No, we were under the impression that the two plans, at least the reapportionment and the redistricting plans, were to be identical.

Q. Were you not advised by your Counsel for the Senate that these two plans could be completely different, one a provisional plan looking only to the 1966 election; and the one looking at the entire legislature—

A. No.

Q. Let me ask you this, then: Had you been so advised—

Judge Pence: Counsel, let us get the hypothetical out—

Mr. Dodge: I am tying this into his statement that there was no consideration by the conferees of any plan that [fol. 861] would have looked at the total apportionment of the entire legislature.

Judge Pence: I think that has already been covered. He said they didn't.

Mr. Dodge: So my question is speculative: Would they, had they known this? Those are the only questions I have.

Judge Pence: Mr. Tonaki?

By Mr. Tonaki:

Q. Senator Takahashi, do you recall the first plan voted by the Legislature keeping the existing districts in Oahu and allocating the senators to the 4th and 9th, to the 4th District?

A. I don't recall—I think that vote was 17 to 8, barely making the necessary two-thirds.

Q. Can you give a breakdown on the party affiliation of the 8?

Judge Pence: Does that become material to this?

Mr. Tonaki: Yes, your Honor.

Judge Pence: Very well. Proceed to answer the question.

A. Well, we took several votes. And I don't recall, there were some Democrats who voted against the plan and Republicans who voted against the plan, but I don't recall the definite vote of the Senate at the moment.

[fol. 862] Q. Of the 17 who favored the original plan, do you know why they switched and did not vote for the latest plan?

A. No.

Q. You don't know? This goes to the status of House Bill 773. Does it go to the people in the 1966 General Election without further action of the Legislature?

A. As it stands today, no.

Q. What more needs to be done?

A. As I understand it, the House will have to vote on it again, two-thirds vote, because they just served notice to the Governor several days ago that this notice is required of the Constitution before final vote is taken. As far as the Senate vote is concerned, we never got the required two-thirds vote also. But we did pass it by a majority. And if it stands as it is now, it will be necessary for us to take this matter up at a succeeding session of our Legislature to get the matter voted on again with the majority of the two-thirds.

Q. Does it require two-thirds the next time?

A. No.

Mr. Tonaki: Thank you, Senator.

Judge Pence: Mr. Kanbara?

By Mr. Kanbara:

Q. Senator, in the 15th Representative District, according to the 1964 registration, the number of voters there is 32,302?

[fol. 863] A. That's correct.

Q. Which would mean that that district, if that were left as a senatorial district, it would be entitled to three senators?

Judge Pence: Which one is that again?

Mr. Kanbara: This is the 15th Representative District.

Judge Beeks: Having six representatives itself?

Mr. Kanbara: Yes, that's correct.

Q. Now, with respect to House Bill 773, the constitutional amendment, before that bill went into conference, it is my understanding, and is my understanding correct, that the

bill then provided for a 1st Senatorial District and 2nd Senatorial District?

A. Yes.

Q. With 2 and 1 senators respectively?

A. That's correct, yes.

Mr. Kanbara: Thank you.

Judge Pence: Any other questions? Thank you, Senator.

* * * * * * *

[fol. 864] Robert Schmitt, a witness called by the Intervenor-Plaintiffs, having previously been sworn, testified as follows:

[fol. 865] Direct examination.

Judge Pence: Mr. Schmitt, you have already been sworn. Proceed to testify.

By Mr. Kimura:

Q. Will you state your full name, please?

A. Robert C. Schmitt.

Q. And, Mr. Schmitt, you are the same person that testified by that name in this proceeding?

A. Yes.

Q. Now, you are reminded that you are under oath. Mr. Schmitt, have you had an opportunity to examine and review the Senate Redistricting Plan for the State of Hawaii, Reapportionment and Redistricting Plan as contained in the Plan submitted to the Federal District Court in this matter?

A. Yes, I have.

Q. And this is contained in House Bill No. 773, S.D. 1, C.D. 1; and House Bill No. 987, S.D. 1, C.D. 1,—

A. Yes.

Q. —referred to in the pleadings?

A. Right.

Q. Now, Mr. Schmitt, I ask and direct your attention to Exhibit 8, which shows the proposed senatorial district in

accordance with the plan submitted, and ask you whether or not the allocation of the number of senators with respect to the 1964 registered voters listed on this exhibit is based [fol. 866] upon an allocation on the method of equal proportions employed under State Constitution with respect to the House of Representatives?

A. Yes. I independently checked the totals on registered voters against the original source, the Lieutenant Governor's report on 1964 votes cast. And I also recomputed the number of senators based on the method of equal proportions and I came to the same results as indicated on that table.

Q. And, Mr. Schmitt, with respect to the districting of the plan as submitted for the State Senate, do you have an opinion with respect to the rationality and the logical districting of the plan as submitted?

A. Yes. My opinion, based on criteria—

Mr. Kanbara: Objection, your Honor.

Judge Pence: One moment. Let's see the basis.

A. (Continuing) —on the basis of substantial equality of the number of registered voters, on the use of longstanding statistical and taxation and land division boundaries, on contiguity and compactness, the districts seemed to be well thought out.

Judge Pence: You didn't have a chance to object, Mr. Kanbara. Do you move to strike?

Mr. Kanbara: I move to strike it.

Judge Pence: What is the basis?

[fol. 867] Mr. Kanbara: I don't think Mr. Schmitt is a legislator.

Judge Pence: The Supreme Court feels it is more than a matter of legislative policy, and the motion is denied.

By Mr. Kimura:

Q. Will you proceed, Mr. Schmitt.

The Witness: May I have that?

(The reporter read the question and answer.)

Q. Now, Mr. Schmitt, in directing your attention to the plan as submitted, well, particularly with districting on Oahu, I direct your attention to Exhibit 6 in evidence and direct your attention to generally the senatorial district beginning with the 3rd Senatorial District, district population, 27,703. Those are the registered voters. It further is indicated with the registered-voter population of 35,780; the 5th with 39,361; the 6th with 40,062; and the 7th, 37,336. Would you like to specifically cover these senatorial districts with your comments and views as you can apply these different criteria in these same number of different districts?

A. Yes. First, I think I might mention a consideration in the use of multimember districts rather than single member districts.

In this particular instance, if we can refer to the law of large numbers, well known to the statisticians and, indeed to laymen, as, for example, with reference to baseball, it is [fol. 868] usually felt that in a 54-game season, the teams sort themselves out pretty well and anything can happen in a 7-game world series. The same thing is true in the trend of registered voters. It has a small area with a large number of small districts which would be subject to considerable fluctuation in a short period of time in the number of registered voters; whereas a small number of large districts or pockets, pocket districts, would be subject to much less fluctuation in the number of registered voters, that is, proportionately. This is over a period of a decade, a large number of small districts would tend to move in very divergent directions; whereas in a few large districts, areas of growth within any district would tend to balance out areas, and vice versa.

Accordingly, there would be much less discrepancy towards the end of an apportionment period, I assume, than in the case of smaller districts.

I prepared a hypothetical set of five districts based on the 1950 population. I am not telling here by registered

voters because we didn't have these districts in 1950, but I took population into the 1950 as a basis for the hypothetical breakdown of five districts in Oahu. And I have another set of twenty-nine districts.

In using five districts, I found a range over—

Mr. Dodge: May it please the Court, this information, was this prepared just for the purpose of this hearing?

[fol. 869] The Witness: This I did this morning.

Mr. Dodge: Well, I object to any testimony with regard to that, because, obviously, if it was prepared this morning, it was not before the Legislature and it would not be the basis for the Legislature to make its determination.

Judge Pence: Would it be your position that if the Legislature by accident arrived at the same result, that the testimony could not justify its action?

Mr. Dodge: Well, I don't think that is quite the point.

Judge Pence: They have submitted a plan. Is it your position that unless they, upon what they consider, can justify it, then the mere fact that it might be justified by a matter which they didn't consider, would not be relevant in our determination?

Mr. Dodge: I understood Mr. Schmitt's testimony to be a moment ago that he is about to read from his hypothetical situation that might have occurred in some—

Judge Pence: He is using that to illustrate, as I understood it, as the Court did, his law of large numbers.

Mr. Dodge: If this explains the law of large numbers, I must object that it is immaterial and irrelevant.

Judge Pence: All right. Why do you say it is irrelevant?

Mr. Dodge: Because the law of large numbers, as I [fol. 870] understood it from what he just said, assumes that they base a multimember of senatorial districts to four members. And this is an assumption that this is what this proceeding is about. I don't think we can get that far.

Judge Pence: Mr. Kimura?

Mr. Kimura: I think in part or I think fully Counsel may be answered by reference to the Conference Committee Report that we have submitted to the Court in support

of our position, in which the Conference Committee Report definitely states that a reason for embarking on this multi-member district plan, as contrasted from the single member—and I read from page 5—

Judge Pence: I am shutting you off. The Court is ready to rule. Proceed.

A. In this high set-up, five districts with substantial equality of population, beginning with the decade, by the end of the decade there has been a decline of 4 percent, 4 percent of the slowest, and a gross of 91 percent in the most rapidly growing, a decline of 4 percent. (Indicating on chart.) And the remainder came between those two points—this 19, this 19 district breakdown. The range was from a decline of 33.6 percent to an increase of 141.7 percent, almost 175 percentage point span. Or to express it in another way, these areas which were quite similar in size at the beginning of the period, for example, the 19 [fol. 871] district breakdown at the beginning of the decade, a range of about 17,900 to 19,500 in population. By the end of the decade, the 5th District breakdown had a range of the lowest of 16,800—I'm sorry, it's 16,100 to the highest of 34,484, almost about 2 to 1. Whereas in the 19 district breakdown, it was a span of 3 to 1, from 12,200 to 46,800.

In any such districting plan, I must emphasize,—it is more purely hypothetical—there would be a tendency for the areas to become very divergent in population or registered voters toward the end of the decade. And within a very few years some areas, declining areas, would be in effect greatly over-represented; whereas growing areas would be unrepresented. This effect would be minimized by the use of larger distance which would tend to have greater stability.

Judge Beeks: Of course, if you divide the State into two, you reduce that fluctuation.

The Witness: Exactly. Now, you asked me specifically about certain district lines. I was very impressed as a statistician to see many of the boundaries chosen by the

Conference Committee are of a long-standing statistical boundaries. Now, statistical boundaries are not in themselves as meaningful as economic boundaries. But it so happens that in Hawaii, where we have excellent statistical boundaries that have endured for many years—for example, the windward side consisting of Koolauloa and Koolaupoko judicial districts has formed a unit since [fol. 872] earliest antiquity. The ancient Hawaiians used these what we now call judicial districts and they were almost exactly the same boundaries as exist today.

The same is true of the breakdown in the 4th and 5th Districts—

By Mr. Kimura:

Q. Excuse me. One second, Mr. Schmitt. When you testify as to Koolauloa and Koolaupoko, that is the proposed 3rd Senatorial District?

A. That's right.

Q. As indicated here on Exhibit 6?

Judge Pence: This would be the entire windward senatorial?

Mr. Kimura: Yes.

The Witness: That has long been used for statistical analysis. That happens to be consistent to the 9th Tax Zone on this island. It is, of course, a political area, the 8th Representative District at the present time. The breakdown between the 4th and 5th Senatorial Districts, which runs between Fort Shafter and Kalihi, is also a long-standing boundary.

Q. May I interrupt just one second? This boundary, this area here marked "4," this large geographical area, and 5th which adjoins it, that is Diamond Head or Koko Head of this area, is that right, on Exhibit 6? (Indicating on map)

A. Yes.

[fol. 873] Q. All right.

A. The boundary, the boundary between Kalihi and Kawaihoa is quite a distinct boundary, distinguishing the

military area from the civilian area. It has been a basic boundary since the very earliest days. In fact, the 5th District is almost identical to that which was used in the first two missionary censuses back in 1830-36 as representing Honolulu City.

Q. May I interrupt one second again, Mr. Schmitt? As to Exhibit 6, we see this short line coming down from the Koolau to the ocean, this particular line. (Indicating on map) This particular line is the same as shown on Exhibit 5 on a larger scale, as indicated—

Judge Pence: Indicating the boundary in red on Exhibit 5 between the 4th and 5th Senatorial Districts?

Mr. Kimura: Yes.

A. There has been some criticism of moving the line from the Honolulu-Ewa boundary, which goes past Red Hill, and between NHA-T and NHA-1, I suppose, down Plantation Drive. However, the Moanalua section is far closer in the social and the proper economic statistics to the area Ewa of it than the area Waikiki of it; that is, Moanalua is quite similar in its population characteristics to Paawa, Aiea, and Pearl Harbor area. It is not similar to Kaimi. Out of 13,635 military housing units on the island, in the State—

[fol. 874] Judge Pence: How much is that figure?

The Witness: 13,635 as of June 1, 1964, in the State.

Judge Pence: This is military housing units?

The Witness: That's right, owned by the Armed Forces, owned and operated by the Armed Forces. And 12,383 fall in the 4th District as we have defined it; 1,124 in the 3rd District; and 29 to the neighbor islands. And 99 in the 5th, 6th, and 7th Districts combined. In other words, we have defined here in the 4th District an area of community of interest, of similar occupational background, that is, largely Armed Forces and their dependents, plus many civilian employees of Pearl Harbor, Barber's Point, and Schofield Barracks. And it does provide a very meaningful boundary.

The breakdown of the 5th and 6th Districts deviates from an existing political boundary. However, it is quite close to the boundaries used in census tract statistics by the United States Bureau of the Census. It also very neatly separates Kakaako from the central business district and it does seem to provide for a clear distinction between areas of different social and housing, economic characteristics.

The division between the 6th and 7th Districts, with the exception of a small jog in the St. Louis Heights area, is identical to that between the 2nd and 3rd Taxation Zones. It corresponds to an old ahupua line and has been [fol. 875] used for statistical purposes.

Also, I think we would agree that there is a considerable difference between the typical residences on the Koko Head side of Diamond Head as distinguished from the residences Ewa of it. For example, the 6th District has most of the high rise and most of the apartments, residential structures in Hawaii. The area on the Koko Head side of the 7th District is primarily a single family housing district.

I think that pretty well covers the statistical significance of these boundaries.

By Mr. Kimura:

Q. On the Island of Hawaii, shown on Exhibit 7, there has been a consolidation of the existing 1st and 2nd Senatorial Districts, East and West Hawaii. Would you like to state your views on this proposed consolidation, in view of the factors and considerations that you have testified to earlier?

A. Yes. I have two points in particular. First, based on the existing 1st and 2nd Senatorial Districts, there would be a relatively large difference between the number of voters per senator in the 1st as against the number in the 2nd. In the 2nd District, I would perceive that one senator would have the smallest number of voters of any of the districts in the State, and would, accordingly, be

most over-represented. Now, that is not to say that it is on the verge of being washed out of existence under the proposed rule if the ratio falls to one-half of the over-all [fol. 876] average, that the Governor should redistrict. However, it has the greatest discrepancy existing in the senatorial districts. It tends to, as the result, over-represent the 2nd District and under-represent the 1st.

There is also the question of shifting of population and registered voters. Since 1930 the 1st District has been losing population. I don't think that is true of the registered voters because we are getting a smaller proportion of aliens on the Big Island. However, in population, the 1st District has been in decline for 35 years, and there seems to be no prospect of an early reversal of this trend.

Since 1950, however, or the late 1940's, the West Hawaii side, the 2nd District, has been growing. And in the last few years, South Kohala, North Kona and South Kona Districts were the only three on the Big Island that increased in population. And they seem to promise a considerable future increase. Now, this would mean that at the end of a ten-year period, there would be a very visible shift in the proportion of population on the Big Island in the 1st as against the 2nd, and would tend by the end of the decade to over-represent the 2nd and greatly under-represent the 1st. Of course, this can be corrected by more frequent redistricting. However, by election at large, the effect of geographic shifts within the County would be effectively compensated.

Q. Now, Mr. Schmitt, based on the criteria that you [fol. 877] have previously enumerated, do you have an opinion as to the comparison on the rational divisions of the existing representative districts as compared to the proposed senatorial districts?

A. Many of the representative districts are imperfect from these criteria. Some are far too small. I might point out especially the 1st District on the Big Island, the Kalihi-Kai District, the 12th and 13th on this Island. Some of them are too large. The 15th is one, obviously. The 16th

is strung out terribly, strung out in an elongated fashion. Many are highly heterogeneous in their social and economic housing characteristics. And certainly they have a very wide variation in size, that is, population over registered voters. They also diverge very considerably from historical statistical boundaries—

Q. In the light of that, how would you compare that with the proposed senatorial districts?

A. I would say this senatorial district, as proposed, shows a good deal more logic and meaningfulness than the existing representative district.

Q. Now, Mr. Schmitt, have you had an opportunity to read the Conference Committee Report No. 1 of the State Senate, addressed to the Honorable Kazuhisa Abe, President of the Senate, with respect to House Bill No. 773, S.D. 1, Conference Draft 1?

[fol. 878] A. Yes, I have a copy before me. I have read it.

Q. Have you had a chance to study the contents thereof?

A. Yes, I have.

Q. Now, in that Conference Report, there appear a number of so-called justifications or reasons for the distri ting of the Senate as proposed. Do you have a comment on such reasons or justifications advanced with respect to the proposed senatorial districting?

Judge Jertberg: Before the witness answers the question, I would like to inquire of the witness, did you contribute to any extent in the preparation of the Report?

The Witness: Not at all. It is the first time I saw it, the first time I saw it, I guess, was yesterday.

Judge Jertberg: Excuse me, Mr. Kimura.

Mr. Dodge: I was going to make another objection, may it please the Court, as to the question just posed to the witness. I think his opinion of what the Legislature said as to the Committee Report is completely irrelevant to this proceeding.

Judge Jertberg: Well, it seems to me that the Report is before the Court.

Mr. Dodge: Yes.

Judge Jertberg: And I doubt very much if the witness' explanation, elucidation of the Report, would be relevant. [fol. 879] Judge Pence: The objection is sustained.

Judge Jertberg: I don't suggest that there would be anything improper about it, but I doubt if you would contribute anything.

By Mr. Kimura:

Q. When was the first time you saw this Committee Report?

A. Last night, I suppose.

Q. Well, were you called upon by the Conference Committee on H.B. No. 773, S.D. 1, to appear or testify on the Committee's deliberations?

A. Not at all. My only relationship to the Conference Committee was making some computations that are in fact not even identified, not identified as coming from the Conference Committee. But I recognize that some of the work that I did must have been at the request of the Committee. However, I had nothing to do with the Conference Committee as such and no discussion with them.

Q. This was primarily on the allocation of senators to the different districts based on the method of equal proportions?

A. That's right, simply computational work in which they said how many senators would come from such and such district for improving it.

Q. But actual establishment or defining of the senatorial district boundaries, your opinions were not called upon? [fol. 880] A. They were neither asked for nor given.

Judge Beeks: Well, we are not in the same fortunate position.

Mr. Kimura: I have no further questions.

Judge Pence: Mr. Dodge?

Cross examination.

By Mr. Dodge:

Q. Mr. Schmitt, with regard to this large number, if we have a single district for the entire State, the law has no application?

A. That's right.

Q. And if we have 25 districts or a 25-member Senate, in other words, if we rule on the single member district, it would have no application?

A. Would you repeat that?

Q. If we assume we are going to have single member districts, a 25-member Senate, the law of large numbers has no application?

A. Yes, it has. That was my point.

Q. But your point was on the assumption that if we have tolerance in the number of districts that we have, some tolerance in the number of Representatives and Senators to be elected from some districts, that is the only time the law applies, when you have no choice.

[fol. 881] A. The larger the number of districts, of course, the smaller the number of persons per district.

Q. True.

A. And the greater the amount of fluctuation over the time that would be expected from district to district.

Q. I said, if you assume that you are going to have 25 districts for 25 Senators, is it important what the law of large numbers says, if this is the basic assumption you have to work with?

A. I suppose if the situation is defined in those terms, and if we are going to accept the fact that there wouldn't be over-representation towards the end of the decade and in some areas under-representation, that is the way it is defined. However, I felt that it would be desirable to avoid such divergence towards the end of an apportionment period.

Q. But is there not provision made for periodic reapportionment to correct it and might it not be that that is the

reason for this very periodic reapportionment to correct these differences in growth that you are speaking of?

A. Of course, over a decade—a decade may be too long, it is not the same, and you tend to minimize this discrepancy over the period, whatever its length.

Q. So it is your opinion that you don't agree with apportionment every ten years and you don't agree with single member districts?

[fol. 882] A. If we had single member—

Q. Would that be correct? I am just trying to figure out why—

Judge Pence: I have listened to the witness. I don't think he said that he doesn't believe that we should have reapportionment every ten years. He simply stated, as I gathered, that since we go on the assumption that we are going to have reapportionment every ten years,—inasmuch as the Supreme Court said maybe that is so—that then he worked on that assumption, if we would have it every ten years. Is that correct?

The Witness: Right.

Judge Pence: Then based upon that assumption, the testimony is that what you feel would be the optimum conditions?

The Witness: That's right.

Judge Pence: To try to get the best means during that ten-year period, is that it?

The Witness: That's right. To minimize the amount of discrepancy that would develop over a decade.

Judge Pence: Proceed.

By Mr. Dodge:

Q. Again I repeat, if we had a single district for the entire Senate, you wouldn't have a problem?

Judge Pence: You mean if you were forced—

Judge Jertberg: You are talking about the election of [fol. 883] Senators at large?

Mr. Dodge: Yes.

Judge Jertberg: The problem of large numbers would have no effect, not if there were a sngle district, if everybody were elected at large?

Judge Beeks: If you get to a district where you have two families and one moves away, you have a difference is fluctuation.

Judge Pence: Mr. Kanbara?

By Mr. Kanbara:

Q. In your analysis of the existing House districts you mentioned that they had quite a heterogeneous occupational population.

A. That's right.

Q. I guess you had in mind the 15th District.

A. 15th is a good one.

Q. How is it heterogeneous? Say from an ethnic standpoint, how is it heterogeneous? How would you say that the 15th District is heterogeneous?

A. Well, Moiliili at the time of the 1960 census had a higher proportion of persons of Japanese ancestry than any census tract on the Island. Waikiki, which is also a part of the 15th District, was second highest among the civilian census tracts in percentage of Caucasian residents. In fact, there is a very sizeable difference. For example, [fol. 884] you get up into incomes that are much higher than they are in some of the parts of Moiliili or McCully. For example, in Waikiki the rent level ranges greatly; it is the lowest in the central district and getting higher as you move in both directions, both mauka and makai. And there are differences in occupational status as well. There you have the high level professional, technical, managerial people who tend to live either in some of the nicer apartments in Waikiki or in upper Manoa; whereas operatives, laborers, clerical workers, middle and some lower middle income people live in the central part of the district. It is not by any means a homogeneous district.

Q. How would you compare, say, the 12th, 13th and 14th, generally speaking, from the income level standpoint?

A. As I recall, one of those, the 14th, includes Nuuanu. And Nuuanu, especially up towards the Old Pali Road and upper part of Nuuanu, is a very distinct socio-economic area. It has the highest proportion of widows in the State, for example.

Q. Wealthy widows?

A. Yes. The median age is the highest of any part of the State in Nuuanu. It has the lowest sex ratio. I hasten to say that sex ratio means the number of males per number of females. On the other hand, in Kapalama district, you have one of the highest sex ratios in the State.

Judge Pence: The most men and the fewest women?

[fol. 885] The Witness: That's correct. They are ethnically quite different. Haoles up in Nuuanu; Filipinos around Aala Park. The incomes diverge a good deal; many differences in occupational status.

Q. How would you characterize, say, the 13th Representative District?

A. That is the one in Kalihi-Kai?

Q. Yes, Palama, Kalihi.

A. That is relatively high homogeneous; it has very little of the upper socio-economic status and a very high proportion of persons of foreign birth or parentage of Asiatic ancestry.

Q. Would it be correct to say that you will find more people in the laboring classes in the 13th District than the 12th?

A. Kam is what—Kalihi?

Q. Kam Heights, Alewa Heights?

A. Yes. I'd say, yes.

Q. How would you compare the 16th?

A. I think the most important difference is political. In the 16th there are four Democratic Representatives and in the 17th four Representatives, which would represent a very basic difference in the political philosophy.

Q. How would you compare the difference in occupational classes of the people in Palolo Valley in the 16th

[fol. 886] District against Aina Haina and the Waialae-Kahala sections in the 17th Representative District?

A. Waialae-Kahala had a median family income in 1959, four persons counted in the 1960 census, of almost $16,000. It was the highest median family income of any census tract in the State. Palolo—and this is a census tract that includes Palolo Housing—was in the lowest half dozen.

Judge Pence: Do you know that figure offhand?

The Witness: It was around $3,000 median. The lowest of all is Chinatown, the section just Ewa of Smith.

Judge Pence: Around the river?

The Witness: From the harbor to Beretania, between Nuuanu Avenue and Nuuanu Stream.

Judge Beeks: Is that around the Ala Wai Canal?

The Witness: No, this is just Ewa, downtown Honolulu.

Q. How do they differ in occupations, Palolo as against the section in the 17th District that I am referring to?

A. Well, in occupational status, highly professional, managerial and such in Waialae-Kahala and Aina Haina, Wailupe Peninsula; as against Palolo which would tend to be the lower socio-economic status, laborers, operatives, clerical workers.

Q. Calling your attention now to the exhibit showing the Island of Hawaii, Mr. Schmitt, you said that the population in West Hawaii is growing; whereas in East Hawaii it is [fol. 887] declining. Is that right?

A. That's right.

Q. So that in time it is not unlikely that there would be a relative evening up of the population? In other words, the disparity would tend to be reduced if the present trend continues?

A. I would say if we apportion now by existing districts, which would give us two Senators, only one in the other and reapportion again ten years later, that there would very well be a reversal of this number, that is, the Hilo side might get only one. Now, that is just a rough guess; population projections are notoriously inaccurate in that re-

spect. But there is a decided geographic shifting of population.

Q. Now, you have indicated in your comparison of the Senate and House districts, that is, the proposed Senatorial districts compared with the existing House districts, you have indicated a great homogenuity in the House districts. When you combine several House districts within a larger Senatorial district, would you not be compounding the heterogenuity? What is the basis for saying that you have greater heterogenuity in the Senatorial districts?

A. Here, I think, we are dealing with two aspects. First is absolute range, and the other is dealing with measures of the single tendency. In statistical terms, as you increase the size of the area, you increase the absolute range within [fol. 888] that area. There is a far greater internal variation in a large area than in a small area. However, the very fact of the extreme at the same time heterogenuity existing House district, would tend to create a clustering towards the middle by grouping them and producing a more normal distribution within the combined districts.

Q. Now, Mr. Schmitt, the 13th District is relatively homogeneous in the sense that you have a lot of laborers and low income groups there. The 12th District, on the other hand, there you have a higher income, higher level occupational group. Is it correct to say—and you cannot say otherwise—that if you combine those two, you have homogenuity; whereas, formerly you had homogenuity as between the 12th and 13th?

A. Well, the boundary between those two is, very unfortunately right now, between those two, the 12th and 13th—

Q. I am talking about the 12th and 13th.

A. —the 12th and 13th—I think the distinction is more by the unfortunate location of the boundary. Of course, by combining those two, you would in that instance increase the dispersion of any socio-economic barriers.

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[fol. 889]

REMARKS OF DEPUTY ATTORNEY GENERAL KANBARA

April 16, 1965

Mr. Kanbara: May it please the Court, the direction of the Court is clear and explicit. It is so clear and to the point that I am constrained to read it back. We believe that the Senate should be redistricted into single senatorial districts, although we may approve 2-member districts if and only the Legislature can affirmatively show reasons therefor. There may very well be valid reasons for one or two 2-member districts in the neighboring islands. But we perceive no justification whatsoever for other than single member districts on the Island of Oahu, particularly the heavily populated areas thereof.

We submit that the Court's position is well-taken and it is based on sound principle. In *Reynolds* vs. *Sims* the Chief Justice mentioned that "conceded the basic aim of legislative reapportionment is fair and effective representation." This is pointed out in our memorandum to the Court of March 24th. I might add, and I don't think it would be presumptious to add to that, that the basic aim is fair, effective and equal representation of all citizens. In *Reynolds* vs. *Sims* the Chief Justice went on further to say,

"By holding that as a federal constitutional requisite both houses of a state legislature must be apportioned on a population basis, we mean that the Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable."

At the risk of sounding pedantic, I think it would be in [fol. 890] order to consider some basic principles of democratic government. The democratic ideal, of course, is that of the so-called pure democracy where every citizen would have an opportunity to cast his vote on issues affecting him. Well, we have the example of early societies, the New England Town Meeting and Switzerland. Of course, with the

growth of population and the growing complexities of the issues, this is not feasible. So we have representative democracy. And I think Judge Maris expressed the point very well when he said in *Drew* vs. *Scranton,* 229 Fed. Sup. 312 at 326, that

"Theoretically, at least, when an electorate is called upon to select from their number a smaller group to speak and act for them in a representative assembly, each voter should participate in the selection of one of the representatives only. For since the persons elected are to comprise a boiled down reflection, as it were, of the larger electorate, and since each of them, therefore, in a very real sense stands in the assembly in the place of a group of voters, it would appear to interfere with and dilute the voting rights of others for a voter to participate in the election of more than one representative. It is doubtless upon this principle that the single-member district system has become the widely accepted method of electing the members of Congress and of many other legislative bodies."

Judge Pence: Wasn't he then talking about one of the Houses?

[fol. 891] Mr. Kanbara: Yes, your Honor. I note that in the Pennsylvania situation the Senate was the single member house, or there was some distinction.

Judge Pence: There was a single member Senate?

Mr. Kanbara: Yes, your Honor.

Judge Jertberg: To what extent was Judge Maris' opinion affected by the action of the Supreme Court?

Mr. Kanbara: The Supreme Court did not reverse the decision. It vacated the decision and remanded it for reconsideration.

Judge Jertberg: Well, primarily it reversed it.

Mr. Kanbara: The Supreme Court of Pennsylvania had referred the matter to the legislature. I might say that in a single member district more than half of the people in this district have given the authority to one man to vote in their name, as to what taxes they shall pay, what criminal

laws they shall be subject to, and what benefits they are to receive for their tax dollars. One of the real evils of this multimember districting system is the submergence of minority groups. We have an excellent example of this where we find East and West Hawaii are separated by a barrier of mountains and lava flows. Now, East Hawaii has a population of about 7,000; West Hawaii has a population of about 20,000. Now, I might mention that of that 20,000—

Judge Pence: I think you have it reversed.

Mr. Kanbara: It is reversed. I'm sorry. West Hawaii has about 7,000 voters; East Hawaii has 20,000, and about [fol. 892] 15,000 of the latter are in the region where Hilo is located. Now, it is obvious to me, if East and West Hawaii are combined into one 3-member district, that you are submerging the voters in West Hawaii thereby.

Judge Pence: Well, you are going simply on numbers, then.

Mr. Kanbara: Beg your pardon?

Judge Pence: In other words, your idea of submergence is simply by numbers?

Mr. Kanbara: Not only that. There are differences in the backgrounds of the people involved, their interests; they differ in this particular instance between East and West Hawaii. I think the Court gave an excellent illustration in its decision on the subject of submergence.

Judge Pence: Thank you very much.

Mr. Kanbara: Now, Keaukaha is predominantly Hawaiian and urban. There was a suggestion of combining Keaukaha and Puna. Puna had a population of 1,700 predominantly of Japanese ancestry and agricultural. The Court correctly pointed out that Keaukaha would have been submerged in that situation. What we have here, as Mr. Schmitt indicated, is that there is a wide divergence in the population from the standpoint of race, occupation, income grouping and interests. (Indicating on chart) And it is no surprise that there has been no representative who resides in the section around Waikiki. I don't understand the

Court to say that only single member districts are permissible. I understand the Court to say that there should [fol. 893] be single member districts because they rest on the principle of democratic representation, and that should be the rule. The Court does not condemn multi-member districts provided the legislators can show justification therefor. We submit that in the testimony before the Court there has been no such justification presented. According to the testimony of the chairman of the Judiciary Committee these were some of the considerations entering into adoption of the plan that is before the Court. First of all the conjecture that with large districts you avoid so-called peanut politics. I don't know what this says for the majority of other state legislatures where single member districts are the rule. Also, that they did not feel it proper that the Senate districts should coincide with the House districts. Traditionally the Senate represented larger districts than did the House. He did mention that the Conference Committee did not take into consideration the fact that the House is multi-member with six representatives from the 15th representative district. These are what you might call negative considerations. We submit these are not affirmative substantial reasons that the Court is speaking of. And the districting cannot be called reasonable on the basis of those justifications.

It is interesting also to note that there was no member on the Conference Committee who would be adversely affected by the districting here involved. For example, West [fol. 894] Hawaii. And it is also curious that three of the Senators, of the present Senators from the 5th District, and who happen to be from the 12th District, are now placed in a proposed Senatorial District that would have four Senators. The same is true for the three Senators from the 4th District who now live in the 15th Representative District.

Judge Beeks: Mr. Kanbara, assume that this Court disapproves the matter that is now before us, what do you

think the Court ought to do? In other words, do you agree with Mr. Tonaki or do you have something else?

Mr. Kanbara: We have not suggested a remedy in this particular case. But I would disagree with Mr. Tonaki, that the matter should be presented to the Legislature.

Another difficulty or defect in the multi-member district, especially when viewed in the light of the existence of single member districts, is the point that in fact you violate the one man one vote principle, in the sense that a man in a four-Senator District gets to vote for four people. I don't think that is an answer to say it is O.K. because a man in a four-Senator District, or rather the population is four times that of the population in the one-Senator District, because the fact of the matter is that a Senator, being a politician, has to consider the benefits of suffrage that the voters bring to him. Here again I think certainly a voter in a four-member district will not have only four votes for the representative but he will have four members of the [fol. 895] House who will be especially concerned with his views and interests and amenable to his persuasion. The voter in a single district will have only one representative to look to to express his views and express his interests.

We submit that we do not have fair, equal representation where you have a mixture of single and multiple member districts.

Judge Jertberg: Whose vote is being diluted under such an arrangement, the voter living in a single representative district or the voter living in a multiple district?

Mr. Kanbara: In the sense that the voter in a single representative district will have only one vote to look to, you might say his vote would be weakened or diluted, than the one in the larger district. I might mention that voting, important as it is, is only a means to an end, and the end is fair representation. And the mere fact that the votes are in proportion from the population standpoint, does not mean that upon a showing of discrimination it will stand the test of Constitutionality.

I would also mention that in the case I cited earlier there was a situation there where you had a senate consisting

of single member districts, and in that regard it was distinguishable, and the Pennsylvania Supreme Court took pains to point out that in the absence of any reasonable justification such districting, this type of mixed districting, might be the result of partisan advantage.

[fol. 896] Judge Beeks: Is the Supreme Court of Pennsylvania in that case talking about State Constitutional or Federal Constitutional?

Mr. Kanbara: I believe they are talking in terms of the Federal Constitution.

Judge Beeks: I wonder. If my recollection is correct, the United States District Court in New York approved a final representative apportionment there as being Federally Constitutional. Then I understand the same Bill was attacked in the State Court and held un-Constitutional from a State Constitutional standpoint because of certain gerrymandering features. That is my recollection. I haven't seen the last opinion but that is my recollection of the situation.

Mr. Kanbara: Now, the fact that this particular plan may be the best that we could expect from the Legislature,—and I submit that the Legislature has done probably the very best it could under the circumstance—we do not feel that that is justification for the Court to accept the plan. It ought to be one that the Court firmly feels is Constitutional. Otherwise we would simply have a Pandora's box of further litigation challenging such a plan if it were put into effect.

Therefore, I close by respectfully submitting that the Court find the plan not acceptable.

Judge Pence: Thank you, Mr. Kanbara.

[fol. 897] Reporters' Certificate to foregoing transcript (omitted in printing).

[fol. 898] Certificate of Clerk (omitted in printing).

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

[fol. 899]

PLAINTIFFS' EXHIBIT 1

Area and District	1960 Population *	1958 Reg. Voters **	1960 Reg. Voters **	1962 Reg. Voters **	Present No. of Legislators	Reapportionment by Method of Equal Proportions Based on: Population 1960	Reg. Voters 1960	Reg. Voters 1962
State of Hawaii	632,772	175,317	202,059	221,650	76	76	76	76
THE SENATE								
First - Hawaii	44,297	19,031	19,266	20,053	5	1	2	2
Second - Hawaii	17,035	6,503	6,793	7,141	2	1	1	1
Third - Maui	42,855	16,755	17,539	18,325	5	2	2	2
Fourth - Oahu	182,307	62,398	73,981	80,490	5	7	9	9
Fifth - Oahu	318,102	59,249	73,142	83,834	5	13	9	10
Sixth - Kauai	28,176	11,381	11,338	11,807	3	1	2	1
THE HOUSE								
First - Hawaii	5,030	2,209	2,257	2,319	1	1	1	1
Second - Hawaii	31,553	13,836	14,036	14,706	3	1	3	2
Third - Hawaii	7,714	2,986	2,973	3,028	1	1	1	1
Fourth - Hawaii	11,369	3,862	4,073	4,239	1	1	1	1
Fifth - Hawaii	5,666	2,641	2,720	2,902	1	1	1	1
Sixth - Maui	7,138	2,560	2,574	2,739	1	1	1	1
Seventh - Maui	35,717	14,195	14,965	15,586	4	3	3	3
Eighth - Oahu	68,281	13,876	18,369	22,450	4	6	5	5
Ninth - Oahu	42,816	5,929	7,410	7,973	2	3	2	2
Tenth - Oahu	95,118	12,926	17,003	20,861	4	8	4	5
Eleventh - Oahu	57,743	10,525	12,553	14,401	3	5	3	3
Twelfth - Oahu	25,552	8,372	10,000	10,889	3	2	3	3
Thirteenth - Oahu	28,592	7,621	7,807	7,260	2	2	2	2
Fourteenth - Oahu	42,476	14,134	16,056	17,305	4	3	4	3
Fifteenth - Oahu	60,125	21,063	25,869	28,685	6	5	6	7
Sixteenth - Oahu	42,750	13,746	16,176	17,072	4	3	4	4
Seventeenth - Oahu	36,956	13,455	15,880	17,428	4	3	4	4
Eighteenth - Kauai	28,176	11,381	11,338	11,807	3	2	3	3

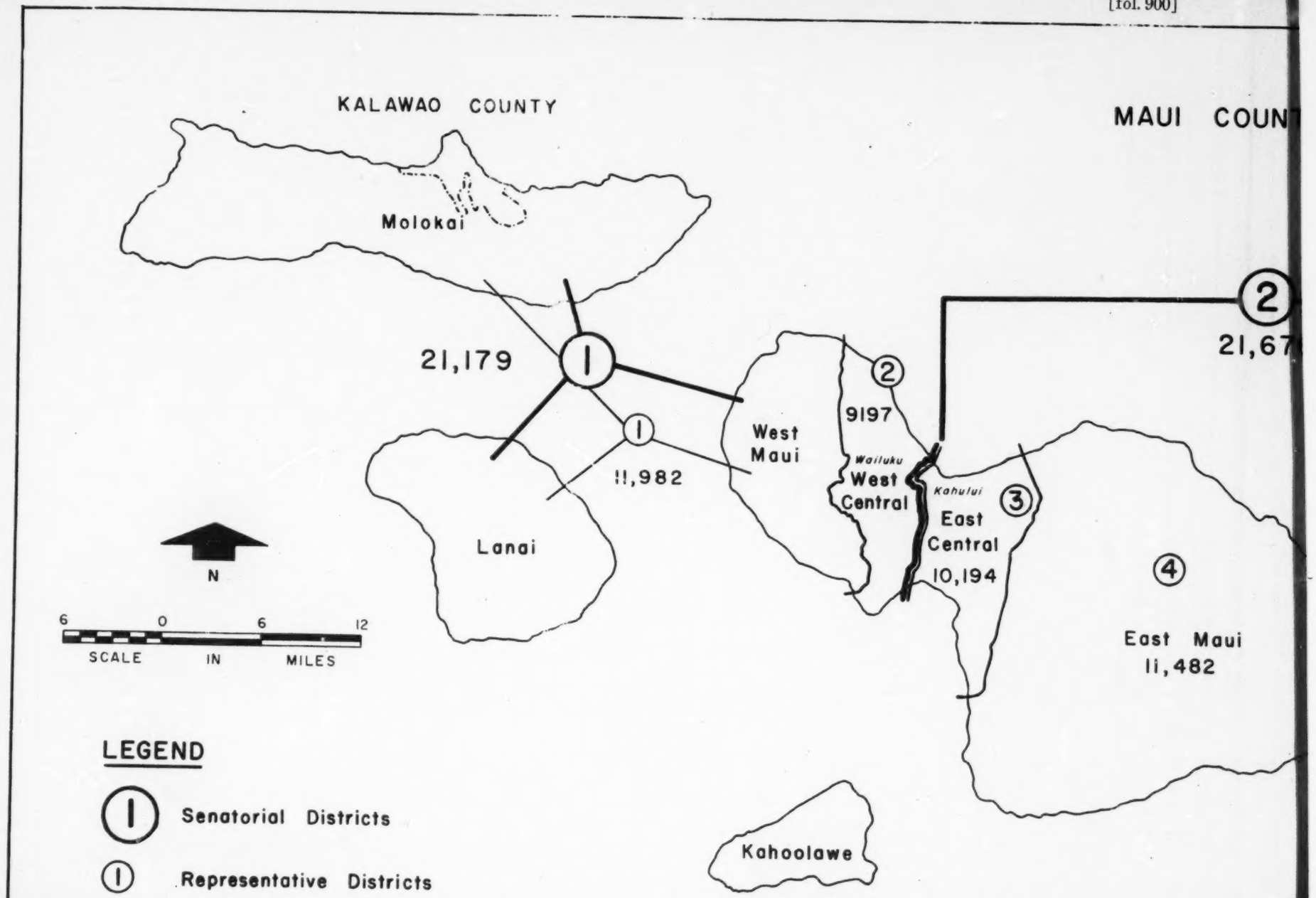
Source: Department of Planning and Economic Development, State of Hawaii, July 28, 1964.

* Based on 1960 Federal Census.

** From Office of the Lieutenant Governor, State of Hawaii. Instances when apportionment based on registered voters differ from that based on population are indicated by underscoring.

In the United States District Court
For the District of Hawaii
Plaintiffs' Exhibit 6

[fol. 900]



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DEPARTMENT OF PLANNING & ECONOMIC DEVELOPMENT

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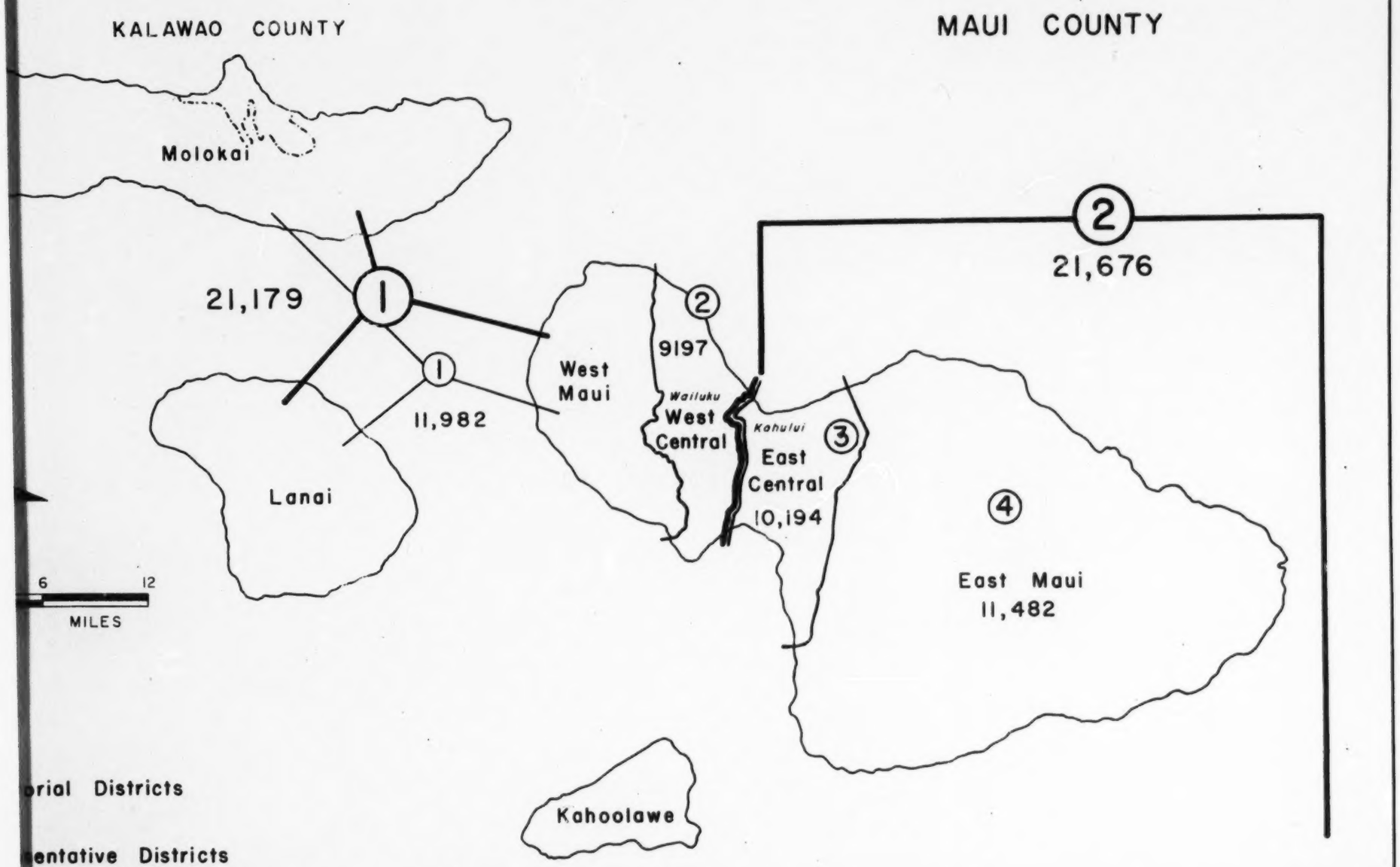

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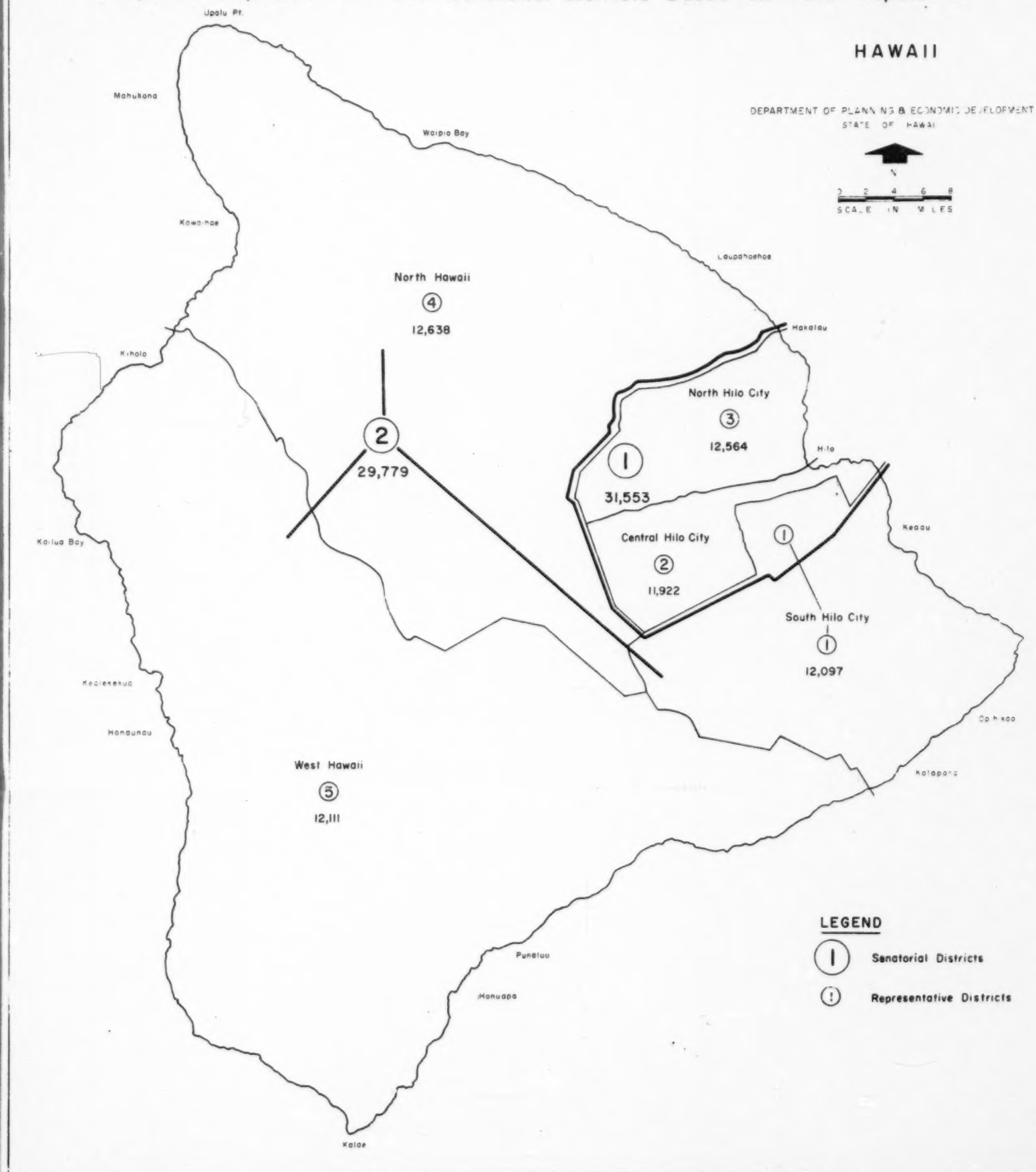
STATE OF HAWAII

In the United States District Court
For the District of Hawaii

Plaintiffs' Exhibit 7

Proposed Representative and Senatorial Districts Based on Total Population

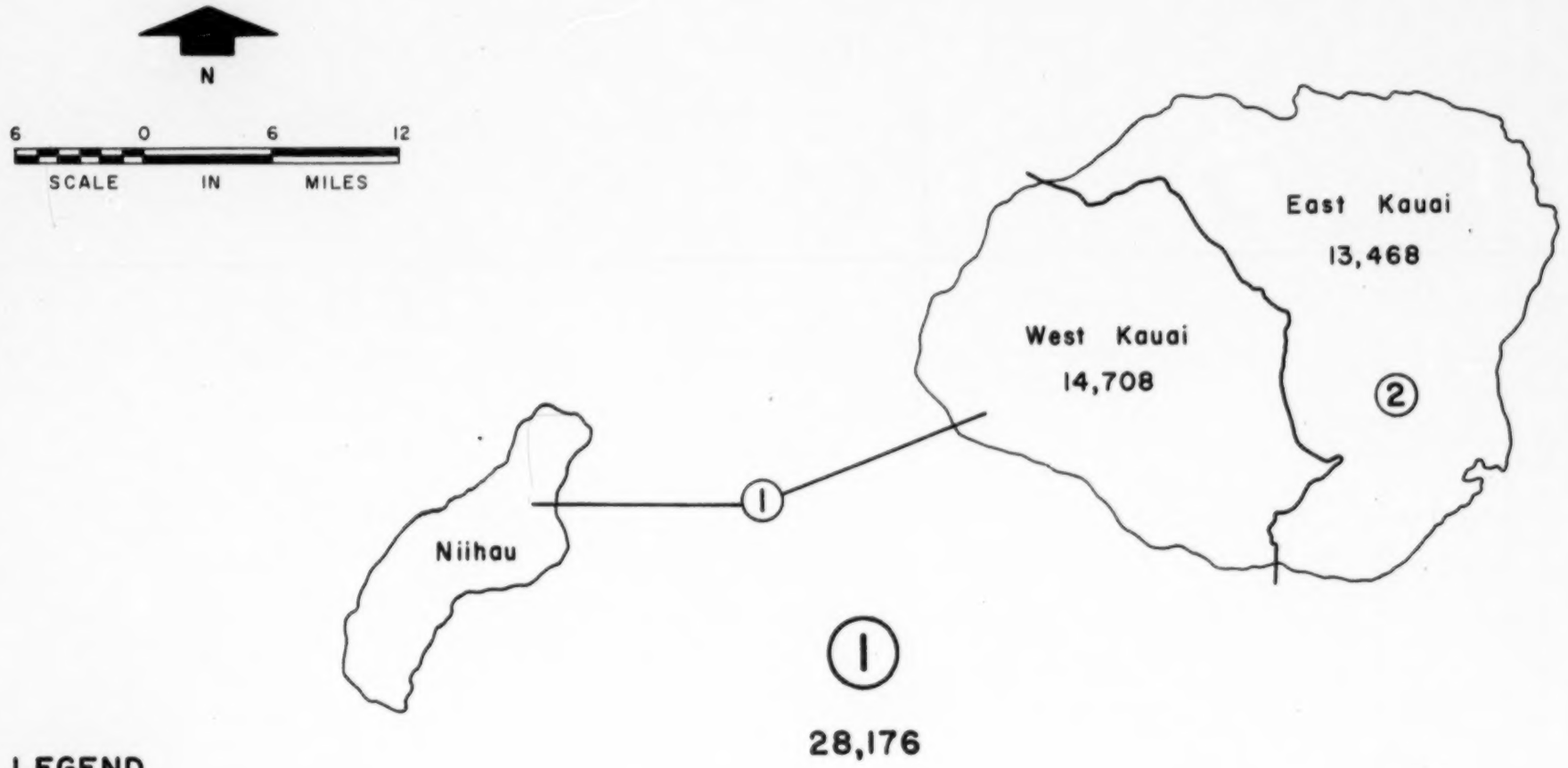


[fol. 901]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

PLAINTIFFS' EXHIBIT 9

KAUAI COUNTY



LEGEND

(1) Senatorial District

(1) Representative Districts

Proposed Representative and Senatorial Districts Based on Total Po

DEPARTMENT OF PLANNING & ECONOMIC DEVELOPMENT STA

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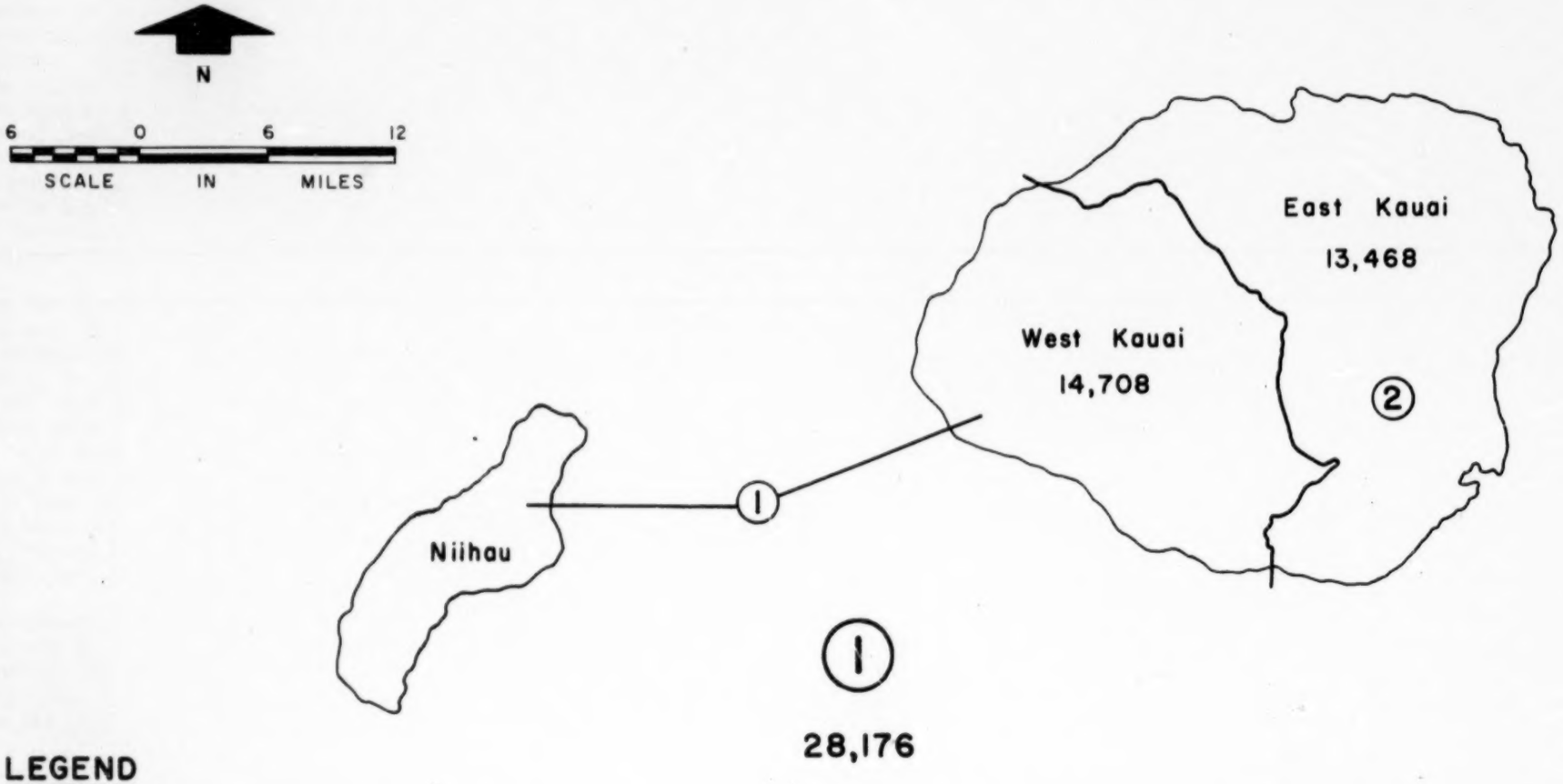
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

PLAINTIFFS' EXHIBIT 9

KAUAI COUNTY



LEGEND

(1) Senatorial District

(1) Representative Districts

posed Representative and Senatorial Districts Based on Total Population

TMENT OF PLANNING & ECONOMIC DEVELOPMENT

STATE OF HAWAII

[fol. 903]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

PLAINTIFFS' EXHIBIT 11

Standing Committee Report No. 92

Your Committee on Legislative Powers and Functions submits herewith a committee proposal for a complete article on legislative powers and functions. The proposal embodies what your Committee believes necessary or desirable in establishing the legislative department of the state government. Before arriving at its proposal your Committee studed the several proposals referred to it, as well as those provisions of the Hawaiian Organic Act, the Model State Constitution and the constitutions of several of the states pertaining to the legislature. Your Committee has decided to retain the framework provided in the Organic Act without substantial change, except in a few particulars.

Your Committee believes that the legislature should remain bicameral, but recognizing the desirability of wider representation of the population, which has greatly increased since the adoption of the Organic Act, has provided for an increase in the membership of both houses of the legislature. However, while it was unanimously agreed that there should be an increase in membership, your Committee was unable to agree as to the extent of the increase. A majority of your Committee approved a senate of 25 members and a house of representatives of 51 members, while a minority insisted that the house should not be larger than 41 members nor the senate larger than 21 members.

[fol. 904] In fixing the composition of the two houses your Committee was faced with the problem of reapportionment, which, with the increase and shift of population since 1900, has become complicated as well as acute. Your committee has agreed that the house of representatives

must be apportioned on the basis of the number of registered voters among the several major island divisions (the present counties) but that the present ratio of representation among the four existing senatorial districts should be maintained in the senate. In districting your Committee made but one change as to senatorial districts, that being the splitting of the island of Oahu into two districts roughly corresponding to the present representative districts, but completely revised the representative districts, which are increased from six to eighteen.

A major departure proposed by your Committee from the provisions of the Organic Act is the provision for annual, as distinguished from biennial, sessions of the legislature. Your committee proposes that of the annual regular sessions, only those held in the odd numbered years, which shall be known as "general sessions," shall be open to all kinds of legislation and that those held in the even numbered years, to be known as "budget sessions," shall be confined to the general appropriations bill and bills to authorize proposed capital improvement expenditures, revenue bills necessary therefor, bills to provide for the expenses of such session, urgency measures deemed necessary in the public interest, bills calling elections and [fol. 905] proposed constitutional amendments. In addition, special sessions are provided for.

The provision for annual sessions is a recognition of the need today for more frequent, if not continuous, sessions of the legislature, particularly in view of the difficulties of projecting estimate of revenues and expenses for two years and more in advance, as is the case at present. The provision for a budget session in those years in which a general session is not held, makes it possible to limit appropriations for the expenses of the government to a single fiscal year.

A similar thought underlies your Committee's action in providing for the establishment of a legislative council. While such a provision might be considered legislative and the inclusion of such provision objected to on that

ground, your Committee believes that the work of the legislature must be implemented by a continuous study by some agency under the control of the legislature in the interim between sessions and that it is a matter of such importance that it should not be left entirely to legislation.

Another important change is in the provision for reapportionment. The provision of the Organic Act for reapportionment has been, as is notorious, totally ineffective. Your Committee proposes that reapportionment be practically automatic every ten years.

Following is a summary of each of the several sections of the proposed article, with some comment.

[fol. 906] Section 1. Legislative powers. Section 1 vests the legislative power in the legislature, which is to consist of a senate and a house of representatives. The legislative power is extended to "all rightful subjects of legislation not inconsistent with the constitution of this state or the constitution of the United States," which phrase is intended as the broadest possible grant. Unlike section 55 of the Organic Act, from the first sentence of which said phrase is derived, and the constitutions of many of the states, the restrictions on the legislative power are not to be found in this article but, if at all, in other parts of the constitution.

Section 2. Senate; senatorial districts; number of members. Section 2 fixes the membership of the senate, delineates the several senatorial districts and fixes the number of senators to be elected from each. The senatorial districts, with the exception of those on the island of Oahu, are the same as now exist for the Territory. Oahu has been divided into two senatorial districts, the boundaries of which are the same as the boundaries for the present fourth and fifth representative districts except that all of windward Oahu is included in the old fifth representative district. Your Committee contemplates no automatic reapportionment of the senate. These districts and the members to be elected from each district will therefore remain until changed by constitutional amendment.

[fol. 907] The Committee proposal increases the membership of the senate from its present 15 to 25. Early in the deliberations of your committee on the question of the composition of each house of the legislature, there was unanimous agreement that the house of representatives should be apportioned according to some fixed principle, and that the senate was to be apportioned on some other basis. The majority of the members of the Committee felt that the present size of the senate, 15 members, was too small. There was general agreement that it should be larger. There was, however, no unanimity as to the exact size that it should be.

The proposed membership of 25 was arrived at by an agreement that the same proportion of Oahu members to neighbor island members be continued. With six members at present being elected from Oahu out of a total senate membership of 15, that proportion today is forty per cent for Oahu as against sixty per cent for the neighbor islands. By selecting a senate of 25 members, that proportion remains unchanged.

This was not the only size for the senate that was considered. The Committee discussed retaining the present 15 member senate, a senate of 19 members, a senate of 20 members with the Lieutenant Governor as its presiding officer, a senate of 21 members and a senate of 23 members. The 20 member senate, while it would have retained the present 40-60 proportion, was rejected as placing legislative authority and responsibility in the Lieutenant Governor, a member of the executive department. Some of [fol. 908] the members felt it inadvisable to go beyond a senate of 21 members, with a distribution of nine for Oahu and twelve for the neighbor islands. However, because this distribution would have given Oahu slightly more than forty per cent of the total senate, a majority of your committee voted to reject this plan. The retention of a 15 member senate was vigorously proposed by some members, but was rejected by a majority of the committee members.

The division of the island of Oahu into two senatorial districts was agreed upon, although not unanimously, in an effort to limit the area that would have to be covered in campaigns and to reduce campaign expenses. The inclusion of the Kailua and Waimanalo areas in the old fifth representative district follows a pattern set by the election districts for the election of Oahu delegates to this convention.

Section 3. House of representatives; representative districts; number of members; apportionment. Section 3 fixes the number of members of the house of representatives. It further describes the 18 representative districts from which the members of the house will be elected. As the descriptions of some districts are necessarily long, they will be included in the schedule of the constitution, but are nevertheless to be considered as a part thereof. The number of members to which each of these districts will be entitled until reapportionment is based on the number of voters registered in each district in 1950.

[fol. 909] From a very early point in your Committee's deliberation on the question of apportionment and reapportionment of the house of representatives, your Committee was unanimous in its decision to apportion the members among the several major island divisions on a realistic basis and in accordance with the principle that representation should be as nearly uniform as possible.

One of the reasons why the reapportionment directed by the Organic Act was not carried out was because that Act required reapportionment on the basis of citizen population. A breakdown of the population according to this standard has not been locally available. Total population figures for the Territory are shown by census tracts which do not necessarily coincide with locally defined areas. As a practical matter, the number of registered voters was found to bear a reliable and fairly uniform relationship to total population, although it favors slightly the neighbor islands where the percentage of persons who have registered to vote is from one to two per cent higher than for

Oahu. It was in recognition of the potential difficulty in obtaining figures which would show citizen population or figures which would show total population by desirable districts, that the basis for apportionment of the members of the house was chosen as the number of registered voters.

A majority of the members of your Committee was of the opinion that the present representation enjoyed by the neighbor islands should not, at least for the present time, [fol. 910] be decreased. With a 51-member house, apportioned equally among the several major island units, the present representation is maintained, although the representation for the island of Oahu is increased from twelve members to 33 members.

The cost to the state of a Legislature, with a 51-member house and a 25-member senate, was discussed at some length by your committee incident to the question of having biennial or annual sessions of the legislature. Some of the members of the committee felt that this larger size would, on a cost basis, make it inadvisable to provide for annual sessions; however, the majority of the members of the committee felt that the state could afford to have both a large legislature and annual sessions.

Section 4. Reapportionment of the house of representatives; mandamus. Some history of the reapportionment problem in the Territory may be outlined here. Under the 1894 Constitution of the Republic of Hawaii, the house of representatives consisted of 15 members, as did the other house. There is no positive proof that the apportionment of the members of the house was on a straight population basis; however, the very high correlation between the number of members from each major island division and the total population of those divisions, as shown by the 1890 census, indicates that total population was probably the standard used. The drafters of the Organic Act, in recognizing that a 15-member house was too small for effective [fol. 911] work, increased the membership to 30. This was done by merely doubling the number of representatives from each representative district. The drafters further

provided that, upon the completion of the next decennial census, and from time to time thereafter, both the house and the senate should be reapportioned by the legislature in accordance with citizen population. It is, of course, well known that this was not done by any succeeding legislature. The reapportionment problem has thus been aggravated by inaction over the years and the inequalities in the representation of the major island divisions have become more and more pronounced. By adopting, as the committee has done unanimously, the principle of uniform representation with periodic reapportionment to meet changing conditions, your committee sincerely feels that the problem has been finally solved. Where there was disagreement in the committee, it was on the total membership of the house and not upon the method of reapportionment.

Section 4 sets out the methods and the procedure for automatic reapportionment, and involves two steps, both of which have been spelled out. Step one is to take the total number of members of the house and to apportion those members among the four major island divisions (which have been defined as "basic areas") on the basis of the number of registered voters in each division. Step two is to take the number of representatives to which each basic area is entitled and to further apportion those members among the several representative districts within each basic [fol. 912] area as those districts are defined in Section 3. This second apportionment is also based on the number of registered voters. The result of this procedure is to achieve what is deemed to be the most equitable distribution of members among the several representative districts. The mathematical process, known as "the method of equal proportions," is the identical method used in apportioning the members of the United States house of representatives among the several states (55 Stat. 761-2; 2 U.S.C.A., 2a, 2b) and has been proven by expert mathematicians to result in the least possible discrimination.

The initial apportionment, as set out in Section 3, maintains the present neighbor island representation in the

house. However, there is no guarantee that upon reapportionment any area or district will continue to be entitled to elect the same number of representatives. Should the number of registered voters in any district, for example, drop in proportion to the number of registered voters in the State as a whole, the number of representatives to which that district would be entitled would be proportionately less.

It was not deemed advisable by your Committee to provide for complete redistricting of the State at the time of each reapportionment. To obviate the necessity for periodic redistricting, representative districts were fixed in such manner that it appears highly improbable that any district in the next few decades will not be entitled, on the basis of registered voters, to elect at least one representative. [fol. 913] Should, however, the number of registered voters fall below the number which would logically entitle it to elect a representative, provision is made for the redistricting of the basic area within which such a district lies. Maps showing the boundaries of these districts have been filed with the convention secretary.

The duty for effecting reapportionment and such redistricting as might be necessary has been placed on the Governor. In order to assure that this duty, which is of a ministerial nature, will actually be carried out, the Governor has been made specifically subject to mandamus by the Supreme Court. This is the only way in which a constitution can guarantee reapportionment and is consequently the method considered by this committee to be the most desirable.

[fol. 914] Section 5. Election of members; term of office. Section 5 provides for the election of members of the legislature at general elections and fixes the term of office of members of the house of representatives at two years and that of members of the senate at four years.

Section 6. Vacancies. Section 6 provides that vacancies in the legislature shall be filled for the unexpired term in

such manner as may be prescribed by law, but if no such provision is made, then by appointment by the governor for the unexpired term. This is a change from the Organic Act (sections 31 and 37), which required vacancies to be filled by election.

Section 7. Qualifications of members. Section 7 states the qualifications for members of the senate and the house of representatives. The requirements are the same as in the Organic Act (sections 34 and 40), namely, (1) attainment of the age of 30 years in case of senators and 25 years in case of members of the house, (2) residence in the State for not less than three years and (3) a requirement that the person be a qualified voter of the district, senatorial or representative, as the case may be, from which he seeks to be elected. The requirement of American citizenship is, of course, implied in the third requirement.

Section 8. Disqualification of public officers and employees. Section 8, which is derived from but somewhat broader than section 17 of the Organic Act, disqualifies any person while holding any public office, position or employment from being elected to or from taking or holding a seat in the legislature, the difference being that the proposed section applies to persons holding public positions or employment as well as public offices. It is not to be construed, [fol. 915] however, to prevent a member of the legislature from being re-elected or to prevent a member of either house from being elected to the other.

Section 9. Privileges of members. Section 9 sets forth the privileges of members of the legislature. The immunity from liability of members of the legislature has been enlarged to include "any statement made or action taken" in the exercise of legislative functions, as compared to section 28 of the Organic Act, which limits the immunity to "words uttered." The proposed section is intended to cover written as well as oral statements and any action taken in the exercise of legislative functions, in the broadest sense.

The provision for exemption from arrest is the same as contained in section 29 of the Organic Act, except that the ten-day limitation on going to and returning from sessions has been omitted.

Section 10. Disqualification of members. Section 10 disqualifies members of the legislature (1) from holding any other public office, position or employment of profit while holding their legislative office and (2) during the term for which they are elected or appointed, from being elected or appointed to any public office, position or employment of profit which is created, or the emoluments whereof are increased, by legislative act during such term. The first disqualification corresponds to a similar disqualification in the judiciary article. The second disqualification is derived from section 16 of the Organic Act but the Organic Act disqualification applies only to "any office of the Territory." [fol. 916] The provision under consideration is different in that (1) the disqualification of a member applies to a position or employment, as well as an office, of profit of the State or any local government or any agency thereof, but (2) on the other hand, it will apply only to an office, position or employment of profit that has been created, or the emoluments whereof increased, by the legislature during the term for which such member was elected or appointed.

[fol. 917] Section 11. Salary of members. Section 11 fixes the salary of members of the legislature as follows: $1,500 for each general session, $1,000 for each budget session and $750 for each special session of the legislature. No salary is to be payable when the senate alone is convened in special session. The salaries are to be payable in such installments as may be prescribed by law. The term "salary" has been used advisedly. While the legislature will have no authority to change the amount of the salaries fixed in this section, it is not intended to preclude the legislature from providing for the payment of per diem allowances and al-

lowances for or reimbursement of travel and other expenses.

Section 12. Sessions of legislature. Section 12 provides for regular sessions to be held annually, as well as special sessions of the legislature or of the senate alone. As briefly stated above, the annual sessions are to be "general sessions" and "budget sessions" in alternate years. The budget sessions are to be limited to the consideration and enactment of the general appropriations bill for the succeeding fiscal year and bills to authorize proposed capital expenditures, revenue bills necessary therefor, urgency measures deemed necessary in the public interest, bills calling elections, proposed constitutional amendments and bills to provide for the expenses of such session. Special limitations are imposed with respect to urgency measures, first, that each urgency measure must contain in a separate section a statement of the facts constituting the urgency, and, second, that no such measure may be considered by either house until such section is first approved by each house. [fol. 918] Furthermore, in the approval of such section and upon the final passage of the measure in each house, a two-thirds vote of all the members to which such house is entitled is required. The term "approval," as used in this respect, is not intended to require anything more than a single reading and vote, as distinguished from the passage of the measure itself, which will require three readings. The time for the commencement of regular sessions has been fixed at 10:00 o'clock a.m., on the third Wednesday in February, the date being the same as provided in section 41 of the Organic Act. General sessions are limited to 60 days, while budget sessions and special sessions are limited to 30 days, but the governor is authorized to extend any session for not more than 30 days. Sundays and holidays do not count in computing the number of days in any session.

Section 13. Adjournments. Section 13, which is substantially the same as section 42 of the Organic Act, simply

provides that neither house may adjourn for more than three days, or sine die, without the consent of the other.

Section 14. Organization; seating and punishment of members; officers; rules; journal; record of vote. Section 14 includes a number of provisions contained in several sections of the Organic Act. The provision that each house shall be the judge of the elections, returns and qualifications of its own members is the same as section 15 of the Organic Act. The provision that each house shall have power to punish any member for misconduct, disorderly behavior, or neglect of duty is derived from section 27 of the Organic Act. The grounds for punishment have been [fol. 919] enlarged to include misconduct, which term is to be taken in its broadest sense. Punishment may be by censure or by suspension or expulsion, but a two-thirds vote of all the members to which the house is entitled is required for suspension or expulsion. The provision that each house shall choose its own officers, determine the rules of its proceedings and keep a journal is substantially the same as section 20 of the Organic Act. The provision that the vote on any question shall be entered upon the journal at the request of one-fifth of the members present is the same as section 21 of the Organic Act.

[fol. 920] Section 15. Quorum; number required to act; compulsory attendance. Section 15 is also taken from several sections of the Organic Act. The requirement of a majority of the number of members to which each house is entitled for a quorum for the conduct of ordinary business, that of a majority of such quorum for action on ordinary business, and the requirement of a majority vote of all the members to which each house is entitled for the final passage of a bill are the same as in section 22 of the Organic Act. The provision for the taking of the vote by ayes and noes and the entry thereof in the journal upon the final passage of a bill is taken from section 46 of the Organic Act. The provision that a smaller number than a quorum may adjourn from day to day and may compel the atten-

dance of absent members is the same as section 23 of the Organic Act.

Section 16. Bills; enactment by bill; subject and title; enacting clause. Section 16 contains one new provision, to wit, that no law shall be passed except by bill. This provision would eliminate the practice of legislating by joint resolutions. This section further requires that each law shall embrace but one subject, which is required to be expressed in its title, as is provided by section 45 of the Organic Act. The description of the enacting clause of laws is substantially the same as that specified in section 44 of the Organic Act.

Section 17. Passage of bills. Section 17 sets forth the requirement of passage on three readings in each house on separate days for any bill to become law, as is provided in section 46 of the Organic Act. The provision for certification of bills from one house to the other upon passage is [fol. 921] the same as in section 47 of the Organic Act.

Section 18. Action by governor; approval; veto; failure to approve or veto. Section 18 is derived from sections 49 and 51 of the Organic Act, both of which relate to action on a bill by the governor after passage by the legislature and certification and presentation thereof to him. A bill becomes law upon approval by the governor, which is indicated by his signing the same. A bill is vetoed by the governor if he returns it, with his objections, to the legislature. The veto power, in the case of any bill appropriating money for specific purposes, is applicable to any specific item or items and may be exercised by striking out or reducing the same, but as to other bills the veto must be of the bill as a whole. Such provisions are the same as the provisions of the Organic Act, except the provision for reduction of specific items as stated above. If any bill is neither signed nor returned by the governor within ten days, Sundays and holidays excepted, after it has been presented to him, it becomes law unless the legislature by adjournment pre-

vents its return, in which case it does not become law. This provision is in substance the same as the second paragraph of section 51 of the Organic Act, except that holidays as well as Sundays are to be excluded in computing the ten day period.

Section 19. Procedure upon veto. Section 19 sets forth the procedure upon veto and is substantially the same as section 50 of the Organic Act. The requirement of a two-thirds vote of all the members to which each house is entitled for the over-riding of the governor's veto is retained.

[fol. 922] Section 20. Punishment of persons not members. Section 20 provides for the summary punishment of persons not members of the legislature for contempt of either house or any committee thereof, the punishment therefor being limited to a fine of not more than $100 or imprisonment for not more than 30 days. The parallel section in the Organic Act is section 25, but there are substantial differences. The proposed section is intended as a declaration of the inherent power of the legislature to punish for contempt, but is not intended to prevent the legislature from enacting legislation to provide for judicial proceedings as an alternative method of vindicating the authority of the legislature, with such penalties as may be provided by such law.

Section 21. Impeachment of elective executive officers. Section 21 provides for the impeachment of the governor and other elective officers of the executive department of the State, as distinguished from the judicial and the legislative branches. Grounds for impeachment are limited to treason, bribery and other high crimes and misdemeanors. The power to impeach is vested in the house of representatives but the power to try all impeachments is vested in the senate. The chief justice presides in case the governor is being tried. Conviction requires concurrence of two-thirds of the members present and judgments upon conviction are limited to removal from office and disqualification

from holding office. Conviction upon impeachment, however, does not preclude further prosecution and punishment according to law. The foregoing provisions are patterned after the provisions of the Federal Constitution on this subject.

[fol. 923] Section 22. Legislative council; duties; salary. Section 22 establishes a legislative council, to be composed of such members of the legislature as may be provided by law. The duties of the council are to collect information concerning the government and general welfare of the State and to report thereon to the legislature, to study and report on such measures for proposed legislation as may be submitted to it and such other duties as may be assigned by law. The council is authorized to recommend such legislation as in its opinion the welfare of the State may require. Members of the council may receive, in addition to their salary as legislators, such salary as may be provided by law.

In conclusion, your Committee believes that this proposal provides a suitable structure for the legislative branch of the State government that has been, in the main, proved by our experience under the Organic Act. Your Committee therefore recommends that this Committee proposal pass on second reading, subject, however to such amendments as may be made thereto.—June 23, 1950

Wm. H. Heen,
Chairman
E. B. Holroyde,
Vice-Chairman
Edward C. Bryan
Randolph Crossley
Hiram L. Fong
Flora K. Hayes
Frederick Ohrt
Thos. T. Sakakihara
Arthur D. Woolaway

Herbert K. H. Lee and Wm. H. Heen—We do not concur as to those portions of Sections 2 and 3 of the proposal which fix the total membership of the senate and house of representatives, and, unless such mem-
[fol. 924] bership is reduced, we do not concur in the

provision for annual sessions contained in Section 12.

Elizabeth R. Kellerman and Cable A. Wirtz—We do not concur with sections 2 and 3.

Toshio ~~Serizawa~~—I do not concur with section 2.

Peter Kawahara—I do not concur with sections 2 and 3.

Vol. I, Proceedings of the Constitutional Convention of Hawaii, pp. 249-253

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

PLAINTIFFS' EXHIBIT 14

DEPARTMENT OF PLANNING AND ECONOMIC DEVELOPMENT
STATE OF HAWAII
HONOLULU, HAWAII 96813

Statistical Report 22 October 15, 1964

ELECTION STATISTICS OF HAWAII

This report presents statistics on the number of persons eligible to register to vote for Hawaii elections, the number and characteristics of registered voters, the number of votes cast, apportionment of the State Legislature (both current and proposed), and party membership of State and County officials.

Trend data are shown from 1900 forward. Hawaii was annexed to the United States in 1898 and granted a Territorial form of government two years later. Statehood was formally achieved on August 19, 1959.

Local government is vested in one combined city and county, three predominantly rural counties, and one quasi county administered by the State Department of Health. There are no incorporated cities or towns.

Additional information appears in Guide to Government in Hawaii (Second Edition, 1963), published by the Legislative Reference Bureau of the University of Hawaii, and in reports of the Office of the Lieutenant Governor.

This summary was prepared by the Statistics Branch of the Department of Planning and Economic Development. Many of the tables were compiled to update the section on "Elections" in the Statistical Abstract of Hawaii, 1962. Others were developed at the request of the Governor and State Legislature to assist in reapportionment of the Legislature. Apportionment was computed by the "Method of Equal Proportions," as recommended by the Advisory Committee to the Director of the Census and the National Academy of Sciences and described in U.S. Senate Document No. 304, 76th Congress, 3d Session (1940). The same method is specified in the Hawaii State Constitution (Art. III, Sect. 4).

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[fol. 926]

Table 1.--POPULATION AND REGISTERED VOTERS, FOR HAWAII: 1902 TO 1962

Year	Civilian population, July 1	Registered voters, Nov.	Per cent of pop. registered	Year	Civilian population, July 1	Registered voters, Nov. 1/	Per cent of pop. registered
1902 2/...	157,100	12,612	8.0	1934	366,700	71,168	19.4
1904 2/...	167,600	13,253	7.9	1936	376,600	75,059	19.9
1906 2/...	166,400	13,578	8.2	1938	388,800	83,312	21.4
1908	182,000	13,274	7.3	1940	397,405	87,312	22.0
1910	191,300	14,442	7.5	1942	446,119	85,292	19.1
1912	200,900	15,185	7.6	1944	464,250	84,326	18.2
1914	217,800	17,699	8.1	1946	470,153	103,180	21.9
1916	228,600	18,981	8.3	1948	491,146	123,616	25.2
1918	241,700	20,124	8.3	1950	472,780	141,319	29.9
1920	254,500	26,335	10.3	1952	462,494	148,717	32.2
1922 2/...	271,500	32,491	12.0	1954	474,391	160,865	33.9
1924 2/...	294,800	34,739	11.8	1956	512,200	170,258	33.2
1926	316,100	40,569	12.8	1958	555,222	175,317	31.6
1928	336,400	46,058	13.7	1959	568,661	183 118	32.2
1930	354,100	52,149	14.7	1960	590,650	202,059	34.2
1932	368,900	63,831	17.3	1962	635,888	221,650	34.9

1/ Except for 1959 (July 28).

2/ Registered voter total differs from that reported in Report of the Governor of Hawaii to the Secretary of the Interior, 1901-1937: 13,449 in 1904, 13,577 in 1906, 28,806 in 1922 and 29,717 in 1924.

Source: Office of the Lieutenant Governor, records; Hawaii Department of Economic Development, Intercensal Population Estimates for Hawaii, 1848-1963 (June 3, 1963), pp. 7-8.

[fol. 927]

Table 2.--POPULATION AND REGISTERED VOTERS, FOR HAWAII, BY COUNTY: 1900 TO 1962

County and year	Total population 1/	Registered voters 2/	Per cent of population registered
All counties:			
1900	154,001	11,218	7.3
1910	191,874	14,442	7.5
1920	255,881	26,335	10.3
1930	368,300	52,149	14.2
1940	422,770	87,312	20.7
1950	499,794	141,319	28.3
1960	632,772	202,059	31.9
1962	682,682	221,650	32.5
City and County of Honolulu:			
1900	58,504	5,704	9.7
1910	81,993	7,555	9.2
1920	123,496	14,667	11.9
1930	202,887	32,511	16.0
1940	257,696	50,370	19.5
1950	353,020	93,353	26.4
1960	500,409	147,123	29.4
1962	549,081	164,324	29.9
Other counties:			
1900	95,497	5,514	5.8
1910	109,881	6,887	6.3
1920	132,385	11,668	8.8
1930	165,413	19,638	11.9
1940	165,074	36,942	22.4
1950	146,774	47,966	32.7
1960	132,363	54,936	41.5
1962	133,601	57,326	42.9

1/ As of June 1, 1900; April 15, 1910; January 1, 1920; April 1, 1930 to 1960; and July 1, 1962.

2/ For general elections held in November. The 1900 total refers to 1901.

Source: U.S. Bureau of the Census, various bulletins; Office of the Lieutenant Governor, records; Hawaii Department of Planning and Economic Development, preliminary 1962 population estimates.

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Table 3.--POPULATION, APRIL 1960, AND REGISTERED VOTERS, NOVEMBER 1960, FOR HAWAII, BY LEGISLATIVE DISTRICT

District	Population	Registered voters	Per cent of pop. registered
The State	632,772	202,059	31.9
SENATE			
First	44,297	19,266	43.5
Second	17,035	6,793	39.9
Third	42,855	17,539	40.9
Fourth	182,307	73,981	40.6
Fifth	318,102	73,142	23.0
Sixth	28,176	11,338	40.2
HOUSE			
First	5,030	2,257	44.9
Second	31,553	14,036	44.5
Third	7,714	2,973	38.5
Fourth	11,369	4,073	35.8
Fifth	5,666	2,720	48.0
Sixth	7,138	2,574	36.1
Seventh	35,717	14,965	41.9
Eighth	68,281	18,369	26.9
Ninth	42,816	7,410	17.3
Tenth	95,118	17,003	17.9
Eleventh	57,743	12,553	21.7
Twelveth	25,552	10,000	39.1
Thirteenth	28,592	7,807	27.3
Fourteenth	42,476	16,056	37.8
Fifteenth	60,125	25,869	43.0
Sixteenth	42,750	16,176	37.8
Seventeenth	36,956	15,880	43.0
Eighteenth	28,176	11,338	40.2

Source: U.S. Census of Population, 1960; Office of the Lieutenant Governor.

[fol. 929]

Table 4.--TOTAL POPULATION, CITIZENS OF VOTING AGE, AND REGISTERED VOTERS, FOR HAWAII: 1900 TO 1960

Year 1/	Total population	U.S. citizens of voting age 2/		Registered voters		
		Number	Per cent of popul.	Number	Per cent of popul.	Per cent of citizens
1900	154,001	14,263	9.3	11,218	7.3	78.7
1910	191,874	20,748	10.8	14,442	7.5	69.6
1920	255,881	62,683	24.5	26,335	10.3	42.0
1930	368,300	130,411	35.4	52,149	14.2	40.0
1940	422,770	186,027	44.0	87,312	20.7	46.9
1950	499,794	223,615	44.7	141,319	28.3	63.2
1960	632,772	312,478	49.4	202,059	31.9	64.7

1/ Total population and U.S. citizen data as of June 1, 1900, April 15, 1910, January 1, 1920, and April 1, 1930 to 1960; registered voters as of November 1901 (not 1900) and 1910 through 1960.

2/ Includes a small number of persons on outlying islands not under Territorial jurisdiction, 1910-1940. Limited to male U.S. citizens 21 and over, 1900 and 1910; all U.S. citizens 21 and over, 1920-1950; and all U.S. citizens 20 and over, 1960. In 1950, Territorial citizens (U.S. citizens with over one year of residence in Hawaii, exclusive of armed forces and their dependents) 21 and over numbered 189,616.

Source: U.S. Bureau of the Census, 12th Census ... 1900, Vol. I, Part I, p. 976; 13th Census ... 1910, Abstract of the Census, p. 581; 15th Census ... 1930, Outlying Territories and Possessions, p. 53; 16th Census ... 1940, Population, Second Series, Hawaii, pp. 6-8; U.S. Census of Population: 1950, Bulletin P-C52, table 32; and U.S. Census of Population: 1960, Vol. I, Part 13, tables 1, 16, and 97. U.S. Department of Justice, Immigration and Naturalization Service, records. Office of the Lieutenant Governor, records. The 1960 estimate of U.S. citizens of voting age was based on total population 20 and over, the number of aliens reported to the U.S. Department of Justice, and the age distribution of the foreign born population.

Table 5.--POPULATION 20 YEARS OF AGE OR MORE, POPULATION ELIGIBLE TO REGISTER, AND REGISTERED VOTERS, BY SEX, FOR HAWAII, BY COUNTY: 1960

Sex and county	Population 20 and over (April 1)	Eligible to register (April 1) 1/		Registered voters (Nov. 8) 2/		
		Number	Per cent of 20 and over	Number	Per cent of 20 and over	Per cent of eligible
Both sexes						
The State	360,193	231,914	64.4	202,059	56.1	87.1
Hawaii	34,594	25,481	73.7	26,059	75.3	102.3
Honolulu	284,901	177,642	62.4	147,123	51.6	82.8
Kauai	16,351	11,220	68.6	11,338	69.3	101.1
Maui and Kalawao .	24,347	17,571	72.2	17,539	72.0	99.8
Males						
The State	196,431	111,229	56.6	104,591	53.2	94.0
Hawaii	19,111	12,978	67.9	13,478	70.5	103.9
Honolulu	154,622	83,598	54.1	75,863	49.1	90.7
Kauai	9,336	5,860	62.8	5,983	64.1	102.1
Maui and Kalawao .	13,362	8,793	65.8	9,267	69.4	105.4
Females						
The State	163,762	120,685	73.7	97,468	59.5	80.8
Hawaii	15,483	12,503	80.8	12,581	81.3	100.6
Honolulu	130,279	94,044	72.2	71,260	54.7	75.8
Kauai	7,015	5,360	76.4	5,355	76.3	99.9
Maui and Kalawao .	10,985	8,778	79.9	8,272	75.3	94.2

1/ Under the State Constitution, all U.S. citizens 20 years of age or more, residents of Hawaii at least one year, and able to speak, read and write English or Hawaiian are qualified to register. Persons who are non compos mentis or convicted of a felony (unless pardoned) are disqualified. No person is deemed to have gained or lost residence simply because of his presence or absence while employed in the service of the United States, or while engaged in navigation, or while attending school.

2/ Includes persons who voted in the preceding general election but who may have subsequently died or moved away.

Source follows table 6.

[fol. 931]

Table 6.--PERSONS 20 YEARS OLD OR MORE NOT ELIGIBLE TO REGISTER, BY GROUP AND SEX, FOR HAWAII, BY COUNTY: 1960

Sex and county	All major groups	Not U.S. citizens	Residents less than 1 year 1/	In mental or penal institution	Military personnel	Military dependents
Total	128,279	51,316	8,529	2,190	45,082	21,162
Males						
Hawaii	6,133	5,735	287	-	111	-
Honolulu	71,024	21,708	3,700	1,429	44,187	-
Kauai	3,476	3,218	140	-	118	-
Maui and Kalawao ..	4,569	4,336	200	-	33	-
Females						
Hawaii	2,980	2,674	232	-	2	72
Honolulu	36,235	10,122	3,700	761	629	21,023
Kauai	1,655	1,501	105	-	2	47
Maui and Kalawao ..	2,207	2,022	165	-	-	20

1/ Civilian non-institutional only.

Source of tables 5 and 6: Robert C. Schmitt, Characteristics of Voters and Non-Voters in Hawaii (University of Hawaii, Romanzo Adams Social Research Laboratory, Report No. 31, November 1961).

Table 7.--ESTIMATED NUMBER OF PERSONS ELIGIBLE TO REGISTER TO VOTE IN HAWAII ELECTIONS: JULY 1, 1964

Group	Number
Resident population, including military personnel	720,600
Eligible to register to vote	283,400
Residents	270,000
Former residents, away at school	2,900
Former residents, in armed forces	10,500
Ineligible residents under 20 years old	310,600
Ineligible residents 20 years old and over	140,000
Aliens	47,600
Inmates of penal or mental institutions	4,600
Military personnel 1/	51,000
Military dependents 1/	24,700
Residents less than one year (civ. only)	12,100

1/ All military personnel and dependents assumed to be registered in other states or otherwise ineligible. In October 1962, military personnel and dependents who were 20 years of age or more, had one year or more of residence in Hawaii, and were living off base numbered 11,400 (including 5,900 servicemen and 5,500 dependents).

Source: Estimated by Statistics Branch, Hawaii Department of Planning and Economic Development, from data supplied by the U.S. Bureau of Census, U.S. Immigration and Naturalization Service, local commanding offices of the armed forces, Hawaii Department of Health, and Honolulu Redevelopment Agency.

[fol. 933]

Table 8.--REGISTERED VOTERS IN HOUSEHOLDS, FOR THE ISLANDS OF OAHU AND HAWAII: JANUARY 1961

Number of registered voters in household	Island of Oahu		Island of Hawaii	
	Number	Per cent	Number	Per cent
All households	124,000	100.0	15,800	100.0
No registered voters	31,700	25.6	1,000	6.2
1 registered voter	19,300	15.6	1,900	12.0
2 registered voters	61,700	49.7	10,200	64.3
3 registered voters	7,800	6.3	1,900	12.2
4 registered voters	2,700	2.2	600	3.6
5 or more registered	800	0.7	200	1.2
Registered voters per household	1.46	...	1.99	...

Source follows table 9.

Table 9.--CHARACTERISTICS OF THE HOUSEHOLD POPULATION 18 AND OVER, BY VOTING REGISTRATION, THE ISLANDS OF OAHU AND HAWAII: JANUARY 1961

Subject	Island of Oahu				Island of Hawaii			
	Per cent distribution			Per cent registered 1/	Per cent distribution			Per cent registered 1/
	Total	Registered	Not registered		Total	Registered	Not registered	
Pop. 18 and over ..	100.0	100.0	100.0	62.6	100.0	100.0	100.0	81.7
Residence:								
Major city 2/	65.0	70.5	55.9	67.8	34.3	36.4	25.2	86.5
Other	35.0	29.5	44.1	52.8	65.7	63.6	74.8	79.1
Race: 3/								
Caucasian	40.1	29.6	57.6	46.2	23.6	24.7	18.7	85.5
Chinese	11.7	15.0	6.1	80.4	2.8	3.3	0.2	98.4
Filipino	5.8	5.7	6.0	61.4	11.8	9.4	22.6	64.9
Hawaiian	5.7	6.9	3.7	75.7	10.1	11.2	5.0	91.0
Japanese	32.6	38.0	23.5	73.0	48.0	48.4	46.3	82.4
Other	4.1	4.7	3.2	71.5	3.8	3.0	7.2	65.1
Highest school grade: 3/								
8th or less	13.4	15.8	9.3	73.9	36.6	34.3	46.5	76.7
9th to 12th	52.7	52.7	52.7	62.5	48.0	51.3	33.4	87.3
13th or more	32.8	30.8	36.2	58.7	14.4	13.9	17.0	78.5
Not reported	1.2	0.8	1.8	42.8	1.0	0.5	3.2	...
Occupation: 3/								
Professional, tech. .	11.5	13.9	7.3	76.1	8.4	9.5	3.7	91.9
Farmers, farm mgrs. .	0.6	0.5	0.7	75.9	8.9	8.9	8.7	82.1
Mgrs., officials, prop.	13.7	16.8	8.5		12.0	12.3	10.7	83.7
Clerical workers	9.4	12.0	5.0	79.9	6.0	6.2	5.0	84.7
Sales workers	4.6	5.8	2.6	78.8	3.7	4.0	2.5	87.7
Military personnel ..	17.1	25.9	55.8	43.7	17.4	18.5	12.7	86.6
Craftsmen, foremen ..	20.0							
Operatives	9.8	11.5	7.0	73.4	18.6	18.1	21.1	79.2
Service workers	5.1	5.3	4.7	65.4	4.4	5.0	2.0	91.8
Farm laborers	0.2	0.2	0.2	57.1	5.1	4.3	8.5	69.4
Laborers, exc. farm .	3.0	2.8	3.5		6.0	5.7	7.2	78.0
Not employed	4.9	5.1	4.6	64.7	9.6	7.7	17.9	65.7
Occ. not reported ...	0.1	0.2	-	...	-	-	-	-

(Continued on next page.)

[fol. 935]

le 9.--CHARACTERISTICS OF THE HOUSEHOLD POPULATION 18 AND OVER, BY VOTING REGISTRATION, FOR THE ISLANDS OF OAHU AND HAWAII: JANUARY 1961--Cont.

Subject	Island of Oahu				Island of Hawaii			
	Per cent distribution				Per cent distribution			
	Total	Registered	Not registered	Per cent registered 1/	Total	Registered	Not registered	Per cent registered 1/
ly income:								
ss than $4,000 ...	15.1	10.6	22.7	43.8	34.6	31.3	49.0	74.0
,000 to $4,999 ...	12.6	10.3	16.5	51.1	16.4	16.4	16.4	81.7
,000 to $6,999 ...	26.6	26.9	26.1	63.3	24.0	24.9	20.4	84.5
,000 to $9,999 ...	23.5	26.0	19.3	69.3	13.5	14.4	9.2	87.5
,000 to $14,999 .	16.1	18.6	11.8	72.4	8.7	9.9	3.0	93.7
,000 or more	6.1	7.5	3.6	77.7	2.8	3.0	2.0	87.1

1/ Not shown separately where base (unexpanded) is less than 50.

2/ Honolulu (on Oahu) or Hilo (on Hawaii).

3/ Refers to head of household.

Source of tables 8 and 9: Robert C. Schmitt, Characteristics of Voters and Non-Voters Hawaii (University of Hawaii, Romanzo Adams Social Research Laboratory, Report No. 31, mber 1961).

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[fol. 936]

Table 10.--REGISTERED VOTERS BY PARTICIPATION IN GENERAL ELECTIONS, FOR HAWAII: 1958 TO 19

General election and Senatorial district	Registered voters	Number voting in general election	Per cent voting
1958, all districts	175,317	154,293	88.0
1959, all districts	183,118	171,383	93.6
1960, all districts	202,059	188,206	93.1
1962, all districts	221,650	200,441	90.4
First District	20,053	18,594	92.7
Second District	7,141	6,560	91.9
Third District	18,325	16,658	90.9
Fourth District	80,490	72,059	89.5
Fifth District	83,834	75,669	90.3
Sixth District	11,807	10,901	92.3

Source: Official Tabulation Results of Votes Cast - General Elections of November 4, 1958; July 28, 1959; November 8, 1960; November 6, 1962.

Table 11.--REGISTERED VOTERS, BY SEX, FOR HAWAII, BY COUNTY: 1960 AND 1962

County	November 8, 1960			November 6, 1962		
	Total	Male	Female	Total	Male	Female
The State	202,059	104,591	97,468	221,650	114,291	107,359
Hawaii	26,059	13,478	12,581	27,194	14,048	13,146
Honolulu	147,123	75,863	71,260	164,324	84,320	80,004
Kauai	11,338	5,983	5,355	11,807	6,242	5,565
Maui and Kalawao	17,539	9,267	8,272	18,325	9,681	8,644

Source: Office of the County Clerk, each county.

[fol. 937]

Table 12.--POPULATION, 1960, AND REGISTERED VOTERS, 1958 TO 1962, FOR HAWAII, BY COUNTY

County	Population, 1960			Reg. voters, general election		
	Total	Civilian	In civilian areas	1958	1960	1962
The State	632,772	585,505	561,100	175,317	202,059	221,650
Honolulu County	500,409	453,582	429,076	121,647	147,123	164,324
Other counties	132,363	131,923	132,024	53,670	54,936	57,326
Hawaii	61,332	61,079	61,105	25,534	26,059	27,194
Maui (incl. Kalawao) ...	42,855	42,810	42,839	16,755	17,539	18,325
Kauai	28,176	28,034	28,080	11,381	11,338	11,807

Source: 1960 U.S. Census; Office of the Lieutenant Governor.

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Table 13.--APPORTIONMENT OF HAWAII STATE LEGISLATURE, BY COUNTY, UNDER VARIOUS BASES

Body and county	Current basis	Reapportioned on basis of population			Reapportioned on basis of registered voters		
		Total	Civilian	In civilian areas	1958 election	1960 election	1962 election
SENATE							
Honolulu County	10	20	19	19	17	18	19
Other counties	15	5	6	6	8	7	6
Hawaii	7	2	3	3	4	3	3
Maui (incl. Kalawao) ...	5	2	2	2	2	2	2
Kauai	3	1	1	1	2	2	1
HOUSE OF REPRESENTATIVES							
Honolulu County	36	40	40	38	36	37	38
Other counties	15	11	11	13	15	14	13
Hawaii	7	5	5	6	7	7	6
Maui (incl. Kalawao) ...	5	4	4	4	5	4	4
Kauai	3	2	2	3	3	3	3

Source: Computed by "Method of Equal Proportions" from table 12.

[fol. 939]

Table 14.--REAPPORTIONMENT OF HAWAII STATE LEGISLATURE, BY SIZE, BASED ON TOTAL 1960 POPULATION

Size of body	City and County of Honolulu	Other counties			
		Total	Hawaii	Maui and Kalawao	Kauai
.....	16	4	2	1	1
.....	17	4	2	1	1
.....	17	5	2	2	1
.....	18	5	2	2	1
.....	19	5	2	2	1
.....	20	5	2	2	1
.....	20	6	3	2	1
.....	21	6	3	2	1
.....	22	6	3	2	1
.....	23	6	3	2	1
.....	24	6	3	2	1
.....	25	6	3	2	1
.....	25	7	3	2	2
.....	26	7	3	2	2
.....	27	7	3	2	2
.....	28	7	3	2	2
.....	28	8	4	2	2
.....	29	8	4	2	2
.....	29	9	4	3	2
.....	30	9	4	3	2
.....	31	9	4	3	2
.....	32	9	4	3	2
.....	33	9	4	3	2
.....	34	9	4	3	2
.....	35	9	4	3	2
.....	36	9	4	3	2
.....	36	10	5	3	2
.....	37	10	5	3	2
.....	38	10	5	3	2
.....	39	10	5	3	2

Continued on next page.

Table 14.--REAPPORTIONMENT OF HAWAII STATE LEGISLATURE, BY SIZE, BASED ON TOTAL 1960 POPULATION--Cont.

Size of body	City and County of Honolulu	Other counties			
		Total	Hawaii	Maui and Kalawao	Kauai
50	40	10	5	3	2
51	40	11	5	4	2
52	41	11	5	4	2
53	42	11	5	4	2
54	43	11	5	4	2
55	44	11	5	4	2
56	44	12	5	4	3
57	45	12	5	4	3
58	45	13	6	4	3
59	46	13	6	4	3
60	47	13	6	4	3
61	48	13	6	4	3
62	49	13	6	4	3
63	50	13	6	4	3
64	51	13	6	4	3
65	52	13	6	4	3
66	52	14	6	5	3
67	53	14	6	5	3
68	53	15	7	5	3
69	54	15	7	5	3
70	55	15	7	5	3
71	56	15	7	5	3
72	57	15	7	5	3
73	58	15	7	5	3
74	59	15	7	5	3
75	60	15	7	5	3
76	61	15	7	5	3
77	61	16	8	5	3
78	62	16	8	5	3
79	62	17	8	5	4
80	63	17	8	5	4

Source: Computed by "Method of Equal Proportions" from data in table 12.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

PLAINTIFFS' EXHIBIT 15

DEPARTMENT OF PLANNING AND ECONOMIC DEVELOPMENT
STATE OF HAWAII
HONOLULU, HAWAII 96813

November 6, 1964

CORRECTIONS

Statistical Report 20, "Military Personnel and Dependents in Hawaii, July 1964" (July 27, 1964).

The total number of military families in Hawaii as of July 1, 1964 was 21,631, not 19,631. The incorrect figure appears in the eighth line of page 1 and in table 1 (page 4), table 2 (page 5), and table 4 (page 7).

The number of military families on Oahu as of July 1, 1964 was 21,476, not 19,476, as reported in table 2, page 5.

The number of Navy families in the State as of July 1, 1964 was 6,803, not 4,803, as reported in table 2, page 5, and table 4, page 7.

The number of Navy families on Oahu was 6,746, not 4,746, as reported in table 3, page 6.

[fol. 942]

DEPARTMENT OF PLANNING AND ECONOMIC DEVELOPMENT
STATE OF HAWAII
HONOLULU, HAWAII 96813

Statistical Report 20

July 27, 1964

MILITARY PERSONNEL AND DEPENDENTS IN HAWAII, JULY 1964

The number of military personnel and dependents in Hawaii increased sharply between July 1, 1963 and July 1, 1964, according to information compiled by the Hawaii Department of Planning and Economic Development from the armed forces. The mid-1964 total was 128,930, compared with 125,602 six months earlier and 118,588 a year ago.

The new total includes 59,840 officers and enlisted men (47,959 stationed ashore and 11,881 aboard ships homeported in Hawaii) and 69,090 dependents domiciled in Hawaii. The number of military families was 19,631.

All branches of the armed forces were represented. Air force personnel and dependents numbered 25,113; Army, 35,769; Coast Guard, 3,108; Marine Corps, 21,135; and Navy, 43,805.

Most of the armed forces and dependents were on Oahu, which accounted for 128,095 of the total. Figures for other islands were: Hawaii, 341; Maui, 98; Kauai, 308; Molokai, 40; and outlying islands, 48. The latter group included 21 Coast Guard personnel on tiny (64-acre) French Frigate Shoal, 556 statute miles northwest of Honolulu, and 27 on Kure Island (one-third of a square mile), 1,367 statute miles northwest of Honolulu. Both French Frigate Shoal and Kure Island are legally part of the City and County of Honolulu. Johnston Island, with 145 Air Force and Coast Guard personnel, and the Midway Islands, with 2,402 Navy personnel and dependents, were excluded from this tabulation because they are not under State jurisdiction.

Recent figures on officers and enlisted men in Hawaii are well below wartime totals. The all-time high occurred in 1944, when 407,000 servicemen, including those aboard ships in Island ports, were reported in the Territory.

The armed forces account for a sizeable fraction of the State's population and labor force. At the beginning of 1964, 17.6 per cent of the resident population of the State (21.5 per cent for Oahu) were military personnel or dependents. About 26.5 per cent of all employed persons in the State (31.3 per cent on Oahu) were either military personnel or civilian employees of the armed forces.

Statistics on military families appear in these reports for the first time. A "military family" is defined as a family headed by a member of the armed forces. A family, in turn, is defined as two or more persons related by blood, marriage, or adoption and living together. A "military household," in contrast, consists of a

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ousehold (the occupants of a regular housing unit) headed by a member of the armed forces. A serviceman living alone in a house or apartment would be classified as a "military household" but not as a "military family."

Data on military families should be used with caution. The figures for earlier years are estimates made a few months ago by local commanding officers and their staffs from available information, some of which was incomplete or only approximate. The data for 1950 in particular are subject to estimating error. The 1950 total shown here (11,640 military families) differs significantly from the corresponding Census count of military households (7,709).[1] The 1960 total given here (19,631 military families), however, is much closer to the Census figure for the same date (19,442 families).[2] The erratic trend shown for the last twelve months is somewhat perplexing.[3]

An effort was also made to reconstruct 1950 data on military personnel and dependents. The rough estimates provided by local commanding officers indicated 29,404 members of the armed forces and 38,325 dependents for Hawaii in that year. The 1950 Census reported 22,856 officers and enlisted men for that date.[4] More recent discrepancies between official series have resulted chiefly from differences in definition and coverage.[5]

Census statistics on the population living on military bases in 1960 likewise appear here for the first time. These counts were provided by the Bureau of the Census at the request of Governor John A. Burns, for use in reapportionment of the State Legislature. Data for earlier years were published by the Honolulu Redevelopment Agency.[6]

Detailed information appears in the accompanying tables. A more extensive review of historical trends, including discussion of definitions and sources, may be found in earlier reports of this series.[7]

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[1] Unpublished U.S Census data cited in the Honolulu Redevelopment Agency, Redevelopment and Housing Research, No. 12, April 1958, p. 27.

[2] U.S. Census of Population: 1960, Final Report PC(1)-13D, table 146. Military households in 1960 numbered 19,700 (see the Hawaii Department of Planning and Research, Military Statistics for Hawaii, 1961-1962, Research Report 16, February 8, 1962, p. 7).

[3] For conflicting data from other sources, see the Honolulu Redevelopment Agency, Redevelopment and Housing Research, No. 23, July 1963, p. 14 (23,900 military households on Oahu in October 1962) and the Honolulu Advertiser, April 2, 1964 (26,850 "families here now").

[4] Quoted in present report, table 8.

[5] See present report, table 9. See also the Department of Defense report quoted in the Honolulu Star-Bulletin, June 11, 1964 (63,831 military dependents exclusive of Coast Guard).

[6] Totals are cited in the present report, table 7.

[7] The most recent was Military Personnel and Dependents in Hawaii, January 1964 (Statistical Report 14, February 15, 1964), which, on page 2, listed previous reports in this series as well as pertinent studies by the Honolulu Redevelopment Agency.

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The data in this study were compiled largely by the Statistics Branch of the Department of Planning and Economic Development from unclassified information supplied by the Air Force, Army, Coast Guard, Marine Corps, and Navy. 8/ The cooperation of the armed forces in making these data available is gratefully acknowledged.

8/ No separate statistics were compiled for the National Guard. For a discussion of the statistical treatment of National Guard members, see the letter from Major General F. W. McKinney quoted in the Hawaii Department of Planning and Research, Military Personnel and Dependents in Hawaii, July 1961 (Research Report 9, August 15, 1961), page 1, footnote 1.

[fol. 945]

Table 1.--MILITARY PERSONNEL, DEPENDENTS, AND FAMILIES, FOR HAWAII: 1950 TO 1964

(As estimated locally. For estimates from other sources, see tables 8 and 9 and text.)

Date	Personnel and dependents	Military personnel			Dependents in Hawaii 1/	Military families
		Total	Ashore	Aboard ship		
1964 July 1	128,930	59,840	47,959	11,881	69,090	19,631
January 1	125,602	59,626	48,242	11,384	65,976	23,025
1963 July 1	118,588	57,093	45,354	11,739	61,495	21,651
January 1	122,968	59,429	47,413	12,016	63,539	21,967
1962 July 1	122,933	59,702	48,020	11,682	63,231	21,973
January 1	121,464	59,487	47,402	12,085	61,977	21,281
1961 July 1	118,381	56,348	44,155	12,193	62,033	21,007
January 1	115,324	54,653	43,723	10,930	60,671	19,567
1960 April 1	112,938	52,881	41,927	10,954	60,057	19,631
1959 Spring	112,525	56,303	(NA)	(NA)	56,222	(NA)
1958 June 30	(NA)	(NA)	(NA)	(NA)	55,641	(NA)
1957 September 30	(NA)	(NA)	(NA)	(NA)	52,962	(NA)
1950 April 1	67,729	29,404	(NA)	(NA)	38,325	11,640

NA Not available.

1/ Data for 1957 and 1958 exclude a small number of dependents on islands other than Oahu. The Oahu count for June 30, 1959 was 55,618.

Source follows table 4.

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[fol. 946]

Table 2.--MILITARY PERSONNEL, DEPENDENTS, AND FAMILIES, BY SERVICE AND ISLAND, FOR HAWAII. JULY 1, 1964

Island and service	Personnel and dependents	Military personnel			Dependents in Hawaii 1/	Military families
		Total	Ashore	Aboard ship		
The State	128,930	59,840	47,959	11,881	69,090	19,631
By island: 1/						
Oahu	128,095	59,431	47,577	11,854	68,664	19,476
Hawaii	341	171	157	14	170	74
Maui	98	41	28	13	57	20
Kauai	308	131	131	-	177	53
Molokai	40	18	18	-	22	8
French Frigate Shoal	21	21	21	-	-	-
Kure	27	27	27	-	-	-
By service:						
Air Force	25,113	7,808	7,808	-	17,305	4,944
Army	35,769	19,000	19,000	-	16,769	5,800
Coast Guard	3,108	1,555	568	987	1,553	523
Marine Corps	21,135	10,450	10,446	4	10,685	3,561
Navy	43,805	21,027	10,137	10,890	22,778	4,803

1/ See table 3 for Johnston Island and the Midway Islands, not part of the State of Hawaii.

Source follows table 4.

[fol. 947]

ble 3.--MILITARY PERSONNEL, DEPENDENTS, AND FAMILIES, BY SERVICE, FOR HAWAII, BY ISLAND: JULY 1, 1964

Service and island	Personnel and dependents	Military personnel			Dependents in Hawaii	Military families
		Total	Ashore	Aboard ship		
AIR FORCE 1/						
hu	25,026	7,775	7,775	-	17,251	4,926
vaii	31	11	11	-	20	6
ui	56	22	22	-	34	12
ARMY						
u	35,589	18,915	18,915	-	16,674	5,773
aii	148	74	74	-	74	20
i	19	5	5	-	14	4
ai	5	4	4	-	1	1
okai	8	2	2	-	6	2
COAST GUARD 2/						
u	2,820	1,410	450	960	1,410	470
aii	106	49	35	14	57	28
i	23	14	1	13	9	4
ai	79	18	18	-	61	15
okai	32	16	16	-	16	6
nch Frigate Shoal	21	21	21	-	-	-
e	27	27	27	-	-	-
MARINE CORPS						
i	21,129	10,444	10,440	4	10,685	3,561
aii	6	6	6	-	-	-
NAVY 3/						
i	43,531	20,887	9,997	10,890	22,644	4,746
aii	50	31	31	-	19	20
ui	224	109	109	-	115	37

1/ Excludes 119 personnel on Johnston Island, not part of the State of Hawaii.

2/ Excludes 26 personnel on Johnston Island, not part of the State of Hawaii.

3/ Excludes 1,608 personnel and 794 dependents on the Midway Islands, not part of the e of Hawaii.

Source follows table 4.

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[fol. 948]

Table 4.--ARMED FORCES, DEPENDENTS, AND MILITARY FAMILIES, BY SERVICE, FOR HAWAII: 1950 TO 1964

Category and date	All branches	Air Force	Army	Coast Guard	Marine Corps	Navy
Armed forces: 1/						
Apr. 1, 1950 2/....	29,404	3,954	6,500	1,150	2,800	15,000
Apr. 1, 1960	52,881	6,089	15,500	1,393	29,934	
Jan. 1, 1961	54,653	6,699	16,159	1,486	30,309	
July 1, 1961	56,348	6,919	16,353	1,616	31,460	
Jan. 1, 1962	59,487	7,149	18,556	1,547	32,235	
July 1, 1962	59,702	7,416	18,439	1,510	32,337	
Jan. 1, 1963	59,429	7,384	17,440	1,365	10,154	23,086
July 1, 1963	57,093	7,646	17,000	1,519	10,327	20,601
Jan. 1, 1964	59,626	7,718	18,000	1,546	10,113	22,249
July 1, 1964	59,840	7,808	19,000	1,555	10,450	21,027
Dependents:						
Apr. 1, 1950 2/....	38,325	7,650	6,000	1,175	3,500	20,000
Apr. 1, 1960	60,057	11,769	17,431	1,496	8,808	20,553
Jan. 1, 1961	60,671	11,756	18,198	1,707	8,703	20,307
July 1, 1961	62,033	13,730	18,198	1,649	8,537	19,919
Jan. 1, 1962	61,977	12,251	20,650	1,502	8,272	19,302
July 1, 1962	63,294	14,006	20,135	1,582	8,252	19,256
Jan. 1, 1963	63,539	14,473	19,298	1,580	8,061	20,127
July 1, 1963	61,495	14,565	17,836	1,598	7,421	20,075
Jan. 1, 1964	65,976	17,519	16,121	1,568	10,983	19,785
July 1, 1964	69,090	17,305	16,769	1,553	10,685	22,778
Military families:						
Apr. 1, 1950 2/....	11,640	3,060	2,000	350	1,230	5,000
Apr. 1, 1960	19,631	4,708	5,447	420	2,340	6,716
Jan. 1, 1961	19,567	4,702	5,447	475	2,252	6,691
July 1, 1961	21,007	5,492	6,568	450	2,114	6,383
Jan. 1, 1962	21,281	4,900	7,700	430	1,893	6,358
July 1, 1962	21,973	5,602	7,701	440	1,877	6,353
Jan. 1, 1963	21,967	5,789	7,005	440	2,024	6,709
July 1, 1963	21,651	5,826	6,800	450	1,884	6,691
Jan. 1, 1964	23,025	7,008	6,300	430	2,692	6,595
July 1, 1964	19,631	4,944	5,800	523	3,561	4,803

1/ Includes armed forces stationed ashore or aboard ships homeported in Hawaii.

2/ Approximate.

Source of tables 1 to 4: Replies to questionnaires submitted to local commanding officers.

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ble 5.--POPULATION AND HOUSING UNITS IN MILITARY INSTALLATIONS IN HAWAII: APRIL 1, 1960

ncludes military bases, military housing areas, Coast Guard stations, and Navy and Coast Guard ships in Hawaii ports.)

County and installation	Enumeration district	Census tract	Population	Housing units
HONOLULU COUNTY				
akapuu Point Light Station	401-01	1	1	-
oko Crater Radar Station	401-02	1	-	-
ort Ruger Military Reservation	401-21	6	366	86
ort DeRussey Military Reservation	401-92	19	112	33
hips (2 vessels)	401-91	19	388	-
hips (13 vessels at Kapalama)	401-268	57	1,258	-
ort Shafter	401-304	66	1,839	297
ripler Hospital	401-305	67	1,138	167
dford Terrace and Halsey Terrace	401-311	69	1,619	937
analua Housing	401-312	70	4,264	1,300
val Housing Area 2	401-312	70	2,216	644
val Housing Area 3	401-313	71	3,363	1,042
eteran's Housing, U.S.N. Supply	401-314	71	683	136
eteran's Housing, Hickam	401-314	72	24	6
ickam Village	401-315	72	2,351	560
ickam Air Force Base	2-316	73	6,454	1,131
ort Kamehameha	2-316	73	1,248	301
val Housing Area 1 1/	2-317	74	5,825	562
mp H.M. Smith	2-320	75	172	12
d Hill Naval Reservation	2-321	75	42	10
nana Naval Housing and Storage Area	2-344	80	1,226	271
earl Harbor Peninsula Naval Housing	2-345	81	1,250	359
ord Island 2/	2-346	81	2,082	107
ipio Peninsula	2-346	82	131	27
rbor's Pt. Hsg. (Iroquois Pt.)	2-349	83	677	618
rbor's Pt. Naval Air Station	2-368	85	5,998	951
una Kapu Radio Station	2-361	86	-	-
nawahua Air Force Reservation	2-362	86	-	-
lailai Military Reservation	2-363	86	-	-
ort Barrette	2-364	86	-	-
rbor's Pt. Water Supply	2-364	86	-	-
.S. Government Reservation	2-365	86	-	-
.S.C. and G.S. Observatory	2-365	86	18	15
earl Harbor Naval Reservation	2-347	89	1,890	-
iawa Military Reservation	2-358	89	54	13
pper Kipapa Military Reservation	2-358	89	-	-
aikele Gulch Military Reservation	2-358	89	317	16
ower Kipapa Military Reservation	2-358	89	-	-

(Continued on next page.)

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Table 5. POPULATION AND HOUSING UNITS IN MILITARY INSTALLATIONS IN HAWAII: APRIL 1, 1960
Continued

County and installation	Enumeration district	Census tract	Population	Housing units
Waikakalaua Military Storage	2-358	89	-	-
Waipio Air Force Reservation	2-359	89	32	-
East Range Schofield Barracks	2-407	90	7	0
Wheeler Air Force Base	2-407	90	1,399	11
Wahiawa Radio Station Naval Reservation	2-392	91	625	253
Kawailoa Training Area	2-392	91	-	69
Schofield Barracks	2-408	95	14,873	-
Camp Andrews Naval Reservation	2-372	96	5	2,083
Lualualei Military Reservation	2-374	96	-	1
Puu Ohulu Kai Military Resevation	2-374	96	-	-
Maili Military Reservation	2-375	96	1	-
Lualualei-Maili Naval Radio Station	2-378	96	575	1
Waianae Kai Military Reservation	2-381	97	-	143
Keaau Military Reservation	2-383	98	-	39
Kaena Pt. Military Reservation (part)	2-383	98	-	-
Makua Military Training Area	2-384	99	-	-
Kaena Pt. Military Reservation (part)	2-384	99	-	-
Dillingham Air Force Base	2-384	99	3	-
Waialua Military Reservation	2-384	99	-	1
Kawailoa Military Reservation	2-390	100	-	-
Helemano Radio Station Military Reservation	2-390	100	325	-
Pupukea-O Military Reservation	2-409	101	-	32
Kahuku Training Area (part)	2-409	101	-	-
Punamano Radio Station	2-410	101	-	-
Kahuku Training Area (part)	2-410	101	-	-
Kokololio Military Reservation	2-412	102	-	-
Kahuku Training Area (part)	2-412	102	-	-
Waikane Air Force Training Area	2-416	103	-	-
Haiku Naval Radio Station	2-421	103	5	-
Heeia Naval Radio Station	2-423	105	-	1
Kapaa Training Area (part)	2-435	107	-	-
Kaneohe Marine Base	2-436	108	6,397	-
Kapaa Training Area (part)	2-437	109	-	969
Kapaa Training Area (part)	2-459	110	-	-
Bellows Field Air Force Base	2-460	113	65	-
French Frigate Shoal	2-465	114	15	8
				-
HAWAII COUNTY				
Kilauea Military Camp	1-33	...	126	25
Ships (2 vessels in Hilo Harbor)	1-3	...	101	-

(Continued on next page.)

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Table 5.--POPULATION AND HOUSING UNITS IN MILITARY INSTALLATIONS IN HAWAII: APRIL 1, 1960
Continued

County and installation	Enumeration district	Census tract	Population	Housing units
KALAWAO COUNTY				
Kalaupapa Light Station, Kalaupapa	3-IN	...	2	-
KAUAI COUNTY				
Barking Sands Military Reservation	4-21	...	70	1
Nawiliwili Light Station	4-4	...	3	-
Nawiliwili Point Light Station	4-23	...	9	-
(1 vessel at Nawiliwili)	4-4	...	14	-
MAUI COUNTY				
(1 vessel at Kahului)	5-30	...	14	-

1/ Includes 3,888 persons aboard 35 ships.

2/ Includes 1,345 persons aboard 12 ships.

Source: Unpublished tabulations from 1960 Census of Population, supplied by Bureau of the Census.

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Table 6.--POPULATION AND HOUSING UNITS IN MILITARY INSTALLATIONS IN HAWAII, BY COUNTY: APRIL 1, 1960

County	Population	Housing units
The State	71,672	13,238
Hawaii	227	25
Honolulu	71,333	13,212
Kalawao	2	-
Kauai	96	1
Maui	14	-

Source: Computed from present report, table 5.

Table 7.--POPULATION IN MILITARY INSTALLATIONS IN HAWAII: 1920 TO 1960

Year	Oahu	Year	The State	Oahu
1920	5,942	1950	40,991	40,928
1930	19,000	1960	71,672	71,333
1940	29,831			

Source: Honolulu Redevelopment Agency, "Available Statistics on the Military Population of Hawaii," Redevelopment and Housing Research, No. 5, July 1956, pp. 36-39; present report, table 6.

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Table 8.--SOLDIERS, SAILORS AND MARINES, 1900 TO 1940, AND ARMED FORCES, 1940 TO 1960, FOR THE STATE OF HAWAII

Date	Soldiers, sailors and marines 1/	Date	Armed forces
June 1, 1900	245	April 1, 1940	27,000
April 15, 1910	1,608	April 1, 1950	22,856
January 1, 1920	4,366	April 1, 1960	47,267
April 1, 1930	16,291		
April 1, 1940	26,233		

1/ Excludes commissioned officers, professional and clerical workers, and craftsmen. Data for 1940 include Coast Guards.

Source. 12th Census of the United States: 1900, Vol. II, Population, Part II, tables 92, 93 and 94, pp. 508, 513, and 567; 13th Census of the United States: 1910, Vol. IV, Population, Occupation Statistics, pp. 609-611; 14th Census of the United States: 1920, Vol. IV, Population, Occupations, table 21, p. 1275; 15th Census of the United States: 1930, Occupational Statistics, Hawaii, table 4; 16th Census of the United States: 1940, 2nd Series, Characteristics of the Population, Hawaii, table 13, p. 18; United States Census of Population: 1950, General Characteristics, Hawaii (Bulletin P-B52), tables 19 and 28; United States Census of Population: 1960, General Social and Economic Characteristics, Hawaii, Final Report PC (1)-13C, table 53. Cited in the Honolulu Redevelopment Agency, Redevelopment and Housing Research, No. 5, July 1956, p. 33.

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Table 9.--MEMBERS OF THE ARMED FORCES IN THE STATE OF HAWAII: 1939 TO 1964

(As estimated by the U.S. Bureau of the Census and U.S. Office of Business Economics. For locally prepared estimates, see table 1.)

Year	Census estimate 1/	OBE estimate 2/	Year	Census estimate 1/	OBE estimate 2/
1939	(NA)	23,502	1952	55,000	35,000
1940	30,000	28,230	1953	48,000	36,000
1941	48,000	44,278	1954	38,000	36,000
1942	136,000	117,155	1955	56,000	47,000
1943	200,000	206,014	1956	58,000	49,000
1944	407,000	378,322	1957	60,000	49,000
1945	355,000	300,328	1958	55,000	45,000
1946	65,000	67,818	1959	56,000	45,000
1947	38,000	33,667	1960	59,000	42,000
1948	33,000	30,035	1961	61,000	45,000
1949	31,000	25,603	1962	79,000	48,000
1950	21,000	21,000	1963	60,000	48,300
1951	44,000	32,000	1964	60,000	(NA)

NA Not available.

1/ As of July 1. Includes crews of ships in Hawaii ports on the estimate date.

2/ Monthly or quarterly averages for the year. Excludes crews of ships in Hawaii ports unless temporarily stationed ashore. Detailed descriptions of the OBE series and comparisons between the OBE and Census data appear in the Honolulu Redevelopment Agency, Redevelopment and Housing Research, No. 5, July 1956, pp. 31-39, and No. 14, December 1958, pp. 22-24 and 27.

Source: U.S. Bureau of the Census, Current Population Reports, Series P-25, No. 80 (October 7, 1953), No. 229 (May 22, 1961), and No. 289 (August 31, 1964). U.S. Office of Business Economics, Income of Hawaii (1953), table 4, p. 20. Letters from Robert E. Graham, Jr., U.S. Office of Business Economics, July 11, 1961, July 30, 1962, June 24, 1963, and May 14, 1964.

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Table 10 --POPULATION AND EMPLOYMENT, BY MILITARY STATUS, FOR HAWAII, BY COUNTY: JANUARY 1, 1964

Subject	Number			Per cent		
	The State	Honolulu County	Other counties	The State	Honolulu County	Other counties
POPULATION						
Total	714,092	580,800	133,292	100.0	100.0	100.0
itary personnel 1/	59,626	59,343	283	8.3	10.2	0.2
itary dependents	65,976	65,644	332	9.2	11.3	0.2
er civilians	588,490	455,813	132,677	82.4	78.5	99.5
EMPLOYMENT						
Total	296,123	249,604	46,519	100.0	100.0	100.0
itary personnel 1/	59,626	59,343	283	20.1	23.8	0.6
ilian employees of med forces 2/	18,798	18,758	40	6.3	7.5	0.1
er employed civilians 2/	217,699	171,503	46,196	73.5	68.7	99.3

1/ Includes personnel aboard ships homeported Hawaii.

2/ As of January 12, 1964.

Source: Hawaii Department of Planning and Economic Development, Military Personnel Dependents in Hawaii, January 1964 (Statistical Report 14, February 15, 1964), p. 3, The Population of Hawaii, January 1964 (Statistical Report 15, March 31, 1964), p. 6. ii Department of Labor and Industrial Relations, records.

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Table 11.--DEPARTMENT OF DEFENSE ACTIVE DUTY MILITARY PERSONNEL IN HAWAII: 1940 TO 1964

Year [1]	Shore based	Naval afloat [2]	Year [1]	Shore based	Naval afloat [2]
1940	27,665	...	1957	38,523	9,850
1943	194,300	...	1958	35,849	6,594
1944	442,160	...	1959	37,536	7,034
1945	322,372	...	1960	35,970	7,155
1946	58,837	...	1961	37,681	6,384
1947	34,900	...			
1948	29,662	...	1962: June 30	41,615	5,737
1949	22,553	...	Sept. 30	41,657	6,505
1950	19,408	...	Dec. 31	41,586	5,980
1951	27,603	7,588	1963: Mar. 31	40,031	6,471
1952	26,486	7,039	June 30	41,018	5,966
1953	24,785	8,595	Sept. 30	40,610	5,764
1954	21,669	7,131	Dec. 31	42,646	5,977
1955	39,611	6,623	1964: Mar. 31	44,649	6,007
1956	39,688	7,278			

Footnotes and source follow table 12.

Table 12.--DEPARTMENT OF DEFENSE MILITARY DEPENDENTS LOCATED IN HAWAII: 1954 TO 1964

Year [3]	Dependents	Year [3]	Dependents
1954: December 31	36,199	1960	62,608
1956: January 31	49,955	1961	63,172
1957: January 31	53,654	1962	63,889
1958	56,976	1963	66,425
1959	50,882	1964	68,138

[1] June 30 unless otherwise specified.

[2] Includes mobile activities temporarily based ashore. Not available for dates before 1951.

[3] March 31 unless otherwise specified.

Source of tables 11 and 12: Letter from Foster Adams, Director, Directorate for Statistical Services, Office of the Assistant Secretary of Defense, September 1, 1964.

[fol. 957]

In the United States District Court

For the District of Hawaii

Plaintiffs' Exhibit 16

...ble 1 -- POPULATION, BY CLASS, FOR HAWAII, BY LEGISLATIVE DISTRICT - 1960

District	Total Population	By Military Status		By Area	
		Armed Forces	Civilians	Military Bases	Civilian Areas
The State - -	632,772	47,267	585,505	71,672	561,100
...torial Districts:					
- - - - - - - - -	44,297	105	44,192	101	44,196
- - - - - - - - -	17,035	148	16,887	126	16,909
- - - - - - - - -	42,855	45	42,810	16	42,839
- - - - - - - - -	182,307	3,940	178,367	882	181,425
- - - - - - - - -	318,102	42,887	275,215	70,451	247,651
- - - - - - - - -	28,176	142	28,034	96	28,080
...sentative Districts:					
- - - - - - - - -	5,030	-	5,030	-	5,030
- - - - - - - - -	31,553	105	31,448	101	31,452
- - - - - - - - -	7,714	-	7,714	-	7,714
- - - - - - - - -	11,369	148	11,221	126	11,243
- - - - - - - - -	5,666	-	5,666	-	5,666
- - - - - - - - -	7,138	22	7,116	2	7,136
- - - - - - - - -	35,717	23	35,694	14	35,703
- - - - - - - - -	68,281	5,749	62,532	6,467	61,814
- - - - - - - - -	42,816	11,883	30,933	17,232	25,584
- - - - - - - - -	95,118	19,223	75,895	27,997	67,121
- - - - - - - - -	57,743	4,480	53,263	17,497	40,246
- - - - - - - - -	25,552	180	25,372	-	25,552
- - - - - - - - -	28,592	1,372	27,220	1,258	27,334
- - - - - - - - -	42,476	1,509	40,967	-	42,476
- - - - - - - - -	60,125	1,803	58,322	500	59,625
- - - - - - - - -	42,750	320	42,430	366	42,384
- - - - - - - - -	36,956	308	36,648	16	36,940
- - - - - - - - -	28,176	142	28,034	96	28,080

...urce: Estimated by Hawaii Department of Planning and Economic Development from data supplied by U. S. Bureau of the Census.

[fol. 958] FOR THE DISTRICT OF HAWAII

DEFENDANT'S EXHIBIT A

Testimony of Robert C. Schmitt, Statistician,
Department of Planning and Economic Development
before the State Senate
July 24, 1964

The purpose of this presentation is threefold: First, to review the various definitions of "population" suggested for use in reapportionment or accepted by State and Federal statistical agencies; second, to consider the availability of statistics for each definition of "population"; and finally, to indicate the number of legislators allotted to each county of the State under the various definitions.

A number of possible bases for reapportionment have been suggested: total population, civilian population, the population living in areas under civilian control, U.S. citizens, the population eligible to register to vote, and actual registered voters. Each of these will be considered.

Total population

Total population, as defined by the United States Bureau of the Census, consists of all persons who normally reside in a given geographic area. It includes military personnel stationed ashore in the area, ships' crews (both civilian and military) in ports of the area in question on the Census date, persons in transient accommodations (hotels, trailers, camps, etc., if they have no regular place of residence or are in the process of changing residence), local residents temporarily out of the State on business or vacation, students from other areas attending a local university, inmates of long-term institutions (mental hospitals, prisons, etc.) The total population excludes ships' crews that may be homeported in the area but temporarily in ports outside of the area, students from the area at schools outside of the area, tourists temporarily visiting the area, and inmates of short-term institutions (general hospitals, etc.) unless they live in the same area. A full statement appears in the "Enumerator's Reference Manual, 1960 Census of Population and Housing," published by the U.S. Bureau of the Census in 1959.

The 1960 population of Hawaii was 632,772, of which 500,409 was in the City and County of Honolulu. The latter figure included 40,345 armed forces ashore and 6,482 aboard Navy or Coast Guard ships in Pearl Harbor and Kapalama Basin. It also included 810 crew members of civilian ships, chiefly in Ala Wai Yacht Harbor, Honolulu Harbor, and Pearl Harbor. The Oahu count further included 3,869 inmates of institutions, such as State Hospital in Kaneohe (1,155), Waimano Home (825), and Oahu Prison (421).

The official U.S. Census is taken decennially, most recently as of April 1, 1960. Annually, as of July 1, the Bureau prepares estimates of (1) total and (2) civilian population by State. The Hawaii State Department of Planning and Economic Development issues semi-annual estimates of (1) resident and (2) de facto population, by military status, for the State and each island.

Geographic detail reported by the decennial census is considerable. Total population is published for the State, each county, each census tract on Oahu, each census county division on the neighbor islands (there are 114 census tracts and 37 census

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county divisions in the State), and each city block in Honolulu. For 1960, special tabulations were authorized (at local cost) for city blocks in Hilo, Wailuku, and Lahaina. Unpublished data are available for enumeration districts, small areas averaging 800 in population, throughout the State. Tabulations are not available for existing election districts or precincts, except in rare cases where the two have identical boundaries.

Civilian population

Civilian population excludes members of the armed forces but includes their dependents, civilian employees of the armed forces, and other civilian groups. It can be estimated from the 1960 Census by subtracting totals for military personnel from the population counts. Data on armed forces can be computed from labor force information included in the Census bulletins. They are reported for counties and census tracts but not census county divisions, blocks, or enumeration districts.

Three potential problems should be kept in mind when using data on armed forces from the 1960 Census:

1. They are not available (except at considerable cost for special tabulations) for many of the smaller areas for which total population can be obtained, such as enumeration districts and city blocks.

2. They were developed from a 25 per cent sample (the total population, in contrast, was taken from a full enumeration) and hence are subject to sampling variation.

3. The 1960 Census total of armed forces (47,267) differs markedly from the corresponding total reported by the Department of Defense to the Bureau of the Census (54,000) or by local commanding officers to the State Department of Planning and Economic Development (52,881). It is not known whether the difference resulted from error in the records of the armed forces, an undercount of military personnel in the Census, or misreporting of servicemen as civilians in the Census. The Bureau of the Census implicitly takes the latter position in its postcensal reports, adopting the published census figure for the total 1960 population and a civilian figure derived from the Department of Defense military count.

As noted earlier, the civilian population excludes members of the Air Force, Army, Coast Guard, Marine Corps, and Navy, but includes military dependents (except for WAC and WAVE personnel married to servicemen) and all civilian employees of the armed forces.

Semi-annual estimates of civilian de facto population, including visitors present but excluding absent residents, are published by the State Department of Health.

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Population of civilian areas

The population of civilian areas consists of all persons living on land not under military control. Each military base was classified as a "special enumeration district" for the 1960 U.S. Census. Unpublished population counts for these special enumeration districts can be obtained from the Bureau of the Census. Subtracting the population totals for these areas from the overall State figure leaves the population of civilian areas.

Census data indicate that persons living on military bases in Hawaii on April 1, 1960 numbered 71,672, with 71,333 on Oahu and 339 on other islands. These totals included armed forces in barracks, military families (both servicemen and dependents) in Wherry or Capehart Act housing areas, civilian employees of the armed forces domiciled in such areas, persons living in Coast Guard stations, and the officers and crews of Navy and Coast Guard ships in Hawaii ports on the Census date. Some of the more populous military bases were Schofield Barracks (14,873, including 6,264 civilians), Kaneohe Marine Corps Air Station (6,397, including 2,631 civilians), and Barbers Point Naval Air Station (5,998, including 2,722 civilians).

Some military areas are more civilian than military in character. The Navy owned 1,697 housing units on Oahu as of April 1, 1960 which were operated by the Hawaii Housing Authority and occupied in part by veterans, civilian employees of the armed forces, and other persons not classified as active military personnel.

American citizens

The number of American citizens living in Hawaii can be estimated by subtracting the 1960 figure on aliens compiled by the U.S. Immigration and Naturalization Service from the 1960 Census count on total population.

Annual tabulations are made on alien population, by nationality and residence status (permanent or non-permanent resident), for each State in the nation, as part of the alien address reports program of the Immigration and Naturalization Service. Except for special tabulations made at widespread intervals, there is no effort to show geographic detail below the State level. Neither age nor sex of the aliens is reported. Data presumably refer to the beginning of the year (the Census, in contrast, refers to April 1). The 1960 total for Hawaii was 51,316.

The 1960 U.S. Census reported place of birth but not citizenship. The foreign born population of Hawaii numbered 68,900 in 1960.

Population eligible to register

The population eligible to register to vote includes all residents except the following: persons less than 20 years of age; aliens; residents of the State for less than one year as of the day of election; persons unable to speak, read and write either Hawaiian or English; persons who are non compos mentis; persons convicted of felony unless pardoned. No one is deemed to have gained or lost residence simply because of his presence or absence while employed in the service of the United States, or while engaged in navigation or while a student in school. These provisions are part of the Hawaii State Constitution (Art. II, Sec. 1-3).

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The eligibility of members of the armed forces and their dependents appears to be a matter of some controversy. Most servicemen are natives of other States, stationed for varying periods in Hawaii and likely to move elsewhere at the end of their tour of duty. Many are registered voters in other States. However, a sizeable percentage are Hawaii residents. A sample survey made by the Honolulu Star-Bulletin in October 1962 and published by the Honolulu Redevelopment Agency (in Redevelopment and Housing Research, July 1963, pp. 14-19) indicated that 23,900 households headed by a member of the armed forces lived on Oahu. An estimated 8.3 per cent of these household heads were Hawaii-born, 71.5 per cent had lived in Hawaii at least one year (and 11.4 per cent over five years), and 6.7 per cent occupied their own homes.

A rough approximation of the population eligible to vote, by county, appeared in a report issued several years ago by the now-defunct Romanzo Adams Social Research Laboratory of the University of Hawaii (Robert C. Schmitt, Characteristics of Voters and Non-Voters in Hawaii, Report 31, November 1961). Its chief findings are summarized in table 1 of this presentation. A more recent estimate, prepared by the Department of Planning and Economic Development is given in table 2.

Many components of the eligible or ineligible population must be estimated from inadequate data. For example, it is possible to obtain civilian non-institutional population 20 and over from the 1960 Census, but data on military dependents registered in other areas, aliens 20 and over, absentee voters, and persons with less than one year residence are not readily available. Such a set of estimates is necessarily inexact, even at the State level; for counties or smaller areas, or for postcensal dates, even greater imprecision is inevitable.

Registered voters

Totals on registered voters are compiled for every election, by senatorial or representative district and precinct. A breakdown by sex is available but not usually published. The boundaries used for election districts and precincts, unfortunately, do not follow census enumeration boundaries.

Reapportionment on each basis

The choice of definition for "population" may greatly affect the number of legislators assigned to each county. For at least four of the definitions cited in the preceding pages -- total population, civilian population, the population in civilian areas, and registered voters -- sufficient statistics are available to permit making an apportionment by county. Lack of data precluded such a computation based on citizenship or eligibility to vote.

Apportionment was computed by the "Method of Equal Proportions," as recommended by the Advisory Committee to the Director of the Census (in 1921) and the National Academy of Sciences (in 1929) and described in Senate Document No. 304, 76th Congress, 3d Session (1940). The same method is specified in the Hawaii State Constitution (Art. III, Sec. 4).

Basic data were taken from the 1960 United States Census and reports of the Lieutenant Governor of Hawaii. Total population was 632,772 in 1960; civilian population, 585,505; the population of civilian areas, 561,100. There were 175,227 voters registered for the 1958 general election, 202,059 in 1960, and 221,650 in 1962. Data are given in full in table 3.

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The percentage of legislators allotted to each county differed significantly depending on the basis for apportionment. Oahu, for example, now has 10 of the 25 State Senators. Based on 1958 registered voters, the number would have been 17; on 1962 voter registration, 19; on either civilian population or the population living in civilian areas, likewise 19; and on total population 20. The neighbor islands, with 15 of the 51 Representatives based on 1958 voter registration, would have dropped to 13 if either 1962 registration or the population in civilian areas had been used and to 11 under either civilian or total population. Complete information appears in table 4.

The distribution by county varies somewhat by size of legislative body. Hawaii County, for example, would have 12.5 per cent of all members of a 16-member House or Senate, 8.0 [illegible]cent of the members of a 25-member body, 11.5 per cent in a 26-member group, and [illegible]r cent in a total membership of 35. This fluctuation is a result of the distr[illegible]tion of "fractional" apportionment under the "Method of Equal Proportions" and is unavoidable. Examples appear in table 5, which shows how many Senators or Representatives each county would receive, on the basis of total population, for each size of legislative body. In order to retain their present number of seats (15 in each house of the Legislature), the neighbor islands would have to ask for a 68-member Senate and 68-member House of Representatives. Such an arrangement would assign 53 seats in each body to Oahu -- an increase of 17 Representatives and 43 Senators for that Island.

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Table 1.--VOTING ELIGIBILITY AND PARTICIPATION OF THE POPULATION 20 YEARS OLD OR MORE: 1960

Subject	The State	By sex		By county	
		Male	Female	Honolulu	Other
20 years and over	360,193	196,431	163,762	284,901	75,292
Eligible to register	231,914	111,229	120,685	177,642	54,272
Registered 1/	202,059	104,591	97,468	147,123	54,936
Not registered	29,855	6,638	23,217	30,519	(1/)
Not eligible to register	128,279	85,202	43,077	107,259	21,020
Not U.S. citizens	51,316	34,997	16,319	31,830	19,486
Residents under 1 year 2/	8,529	4,327	4,202	7,400	1,129
In institutions	2,190	1,429	761	2,190	-
Military personnel	45,082	44,449	633	44,816	266
Military dependents	21,162	-	21,162	21,023	139

1/Totals for registered voters may include persons who voted in the previous election and subsequently died or moved away. As a result, the number of registered voters exceeded the number eligible by 664 in the counties other than Honolulu.

2/Civilian non-institutional only.

Source: Robert C. Schmitt, Characteristics of Voters and Non-Voters in Hawaii (University of Hawaii, Romanzo Adams Social Research Laboratory, November 1961).

Table 2.--ESTIMATED NUMBER OF PERSONS ELIGIBLE TO REGISTER TO VOTE IN HAWAII ELECTIONS: JANUARY 1, 1964

(For the State of Hawaii. Available information does not permit a county breakdown for 1964.

Group	Number
Resident population, including military personnel	714,100
Eligible to register to vote	280,500
Residents	267,700
Former residents, away at school	2,200
Former residents, in armed forces	10,600
Ineligible residents under 20 years old	307,800
Ineligible residents 20 years old and over	138,600
Aliens	47,600
Inmates of penal or mental institutions	4,500
Military personnel 1/	50,800
Military dependents 1/	23,600
Residents less than one year (civ. only)	12,100

1/All military personnel and dependents are assumed to be registered in other states or otherwise ineligible. In October 1962, military personnel and dependents who were 20 years of age or more, had one year or more of residence in Hawaii, and were living off base numbered 11,400 (including 5,900 servicemen and 5,500 dependents).

Source: Hawaii Department of Planning and Economic Development, Statistics Branch, estimates.

[fol. 965]

Table 3.--POPULATION AND VOTER REGISTRATION DATA REQUIRED FOR REAPPORTIONMENT OF THE HAWAII STATE LEGISLATURE

County	Population, 1960			Registered voters	
	Total	Civilian	In civilian areas	1958 election	1962 election
The State	632,772	585,505	561,100	175,227	221,650
[illegible] County	61,332	61,079	61,105	25,444	27,194
Honolulu County	500,409	453,582	429,076	121,647	164,324
[illegible] County	28,176	28,034	28,080	11,381	11,807
[illegible] County 1/	42,855	42,810	42,839	16,755	18,325

1/Includes Kalawao County.

Source: 1960 U.S. Census, Office of the Lieutenant Governor.

Table 4.--REAPPORTIONMENT OF HAWAII STATE LEGISLATURE, WITH MEMBERSHIP OF 25 AND 51 UNDER VARIOUS BASES

Membership and county	Current basis 1/	Reapportioned on basis of population 2/			Reapportioned on basis of voter registration 2/	
		Total	Civilian	In civilian areas	1958 election	1962 election
25 MEMBERS						
Honolulu County	10	20	19	19	17	19
Other counties	15	5	6	6	8	6
Hawaii	7	2	3	3	4	3
Maui 3/	5	2	2	2	2	2
Kauai	3	1	1	1	2	1
51 MEMBERS						
Honolulu County	36	40	40	38	36	38
Other counties	15	11	11	13	15	13
Hawaii	7	5	5	6	7	6
Maui 3/	5	4	4	4	5	4
Kauai	3	2	2	3	3	3

1/ 25 for Senate and 51 for House of Representatives.

2/ Either Senate, House of Representatives, or a unicameral legislature.

3/ Includes Kalawao County.

Note follows table 5.

[fol. 966]

Table 5.--APPORTIONMENT OF HAWAII STATE LEGISLATURE BY SIZE BASED ON TOTAL 1960 POPULATION

Size of body	City and County of Honolulu	Other counties			
		Total	Hawaii	Maui and Kalawao	Kauai
20	16	4	2	1	1
21	17	4	2	1	1
22	17	5	2	2	1
23	18	5	2	2	1
24	19	5	2	2	1
25	20	5	2	2	1
26	20	6	3	2	1
27	21	6	3	2	1
28	22	6	3	2	1
29	23	6	3	2	1
30	24	6	3	2	1
31	25	6	3	2	1
32	25	7	3	2	2
33	26	7	3	2	2
34	27	7	3	2	2
35	28	7	3	2	2
36	28	8	4	2	2
37	29	8	4	2	2
38	29	9	4	3	2
39	30	9	4	3	2
40	31	9	4	3	2
41	32	9	4	3	2
42	33	9	4	3	2
43	34	9	4	3	2
44	35	9	4	3	2
45	36	9	4	3	2
46	36	10	5	3	2
47	37	10	5	3	2
48	38	10	5	3	2
49	39	10	5	3	2
50	40	10	5	3	2
51	40	11	5	4	2
52	41	11	5	4	2
53	42	11	5	4	2
54	43	11	5	4	2
55	44	11	5	4	2
56	44	12	5	4	3
57	45	12	5	4	3
58	45	13	5	4	3
59	46	13	6	4	3

(continued on next page)

[fol. 967]

TABLE 3.--REAPPORTIONMENT OF HAWAII STATE LEGISLATURE, BY SIZE, BASED ON TOTAL 1960 POPULATION (cont'd)

Size of body	City and County of Honolulu	Other counties			
		Total	Hawaii	Maui and Kalawao	Kauai
47	13	6	4	3
48	13	6	4	3
49	13	6	4	3
50	13	6	4	3
51	13	6	4	3
52	13	6	4	3
52	14	6	5	3
53	14	6	5	3
53	15	7	5	3
54	15	7	5	3
55	15	7	5	3
56	15	7	5	3
57	15	7	5	3
58	15	7	5	3
59	15	7	5	3
60	15	7	5	3
61	15	7	5	3
61	16	8	5	3
62	16	8	5	3
62	17	8	5	4
63	17	8	5	4

Basis of tables 4 and 5: Computed from table 3 by the "Method of Equal Proportions."

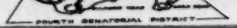
[fol. 968]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

DEFENDANT'S EXHIBIT B

Primary: Sat., Oct. 3
General: Tues., Nov. 3



HONOLULU

(City Clerk Staffing)

City Clerk's Office, City Hall	- Daily, 7:45 a.m. to 4:30 p.m.
Sears (Mall)	- Mon., Thurs., Fri., 12:30 to 8:30 p.m.; Tues. & Wed., 9 a.m. to 5 p.m.
Bank of Hawaii (downtown)	- Banking hours

(Volunteer Registrars)

HONOLULU

GEM (Ala Moana)	- Daily, noon to 4 p.m. & 6 to 9 p.m. Sats. & Suns., 10 a.m. to 5 p.m.
GEM (Kapalama)	- Daily, 6 to 9 p.m. Sats. & Suns., 10 to 5 p.m.
Pali Safeway	- Fridays, 6 to 9 p.m. Sats. & Suns., afternoons
U.of H. Library	- Schedule as posted
Kamehameha Shopping Center	- Fridays, 4 to 7:30 p.m. Sats., 10 to 2 p.m.
Family Fair	- Fridays, 6 p.m. to 9 p.m. Sats. & Suns., 11 a.m. to 3 p.m.

WAIMALU

Waimalu Shopping Center	- Schedule as posted

PEARL CITY

Take's Market	- Daily, 11 a.m. to 9 p.m.
Foodland	- Fridays, 6 p.m. to 9 p.m. Sats., 11 a.m. to 3 p.m.

WAIPAHU

Food City	- Fridays, 6 to 9 p.m. Sats. & Suns., 11 a.m. to 3 p.m.

EWA BEACH

Foodland	- Sats. & Suns., 11 a.m. to 3 p.m.

KANAKULI

Nakatani Store	- Daily, as posted

WAIANAE

Bank of Hawaii	- Fridays, 6 p.m. to 9 p.m. Sats. & Suns., 11 a.m. to 3 p.m.

WAHIAWA

Wahiawa Shopping Center	- Fridays, 6 p.m. to 9 p.m.
Big Way Supermarket	- Sats., 10 a.m. to 1 p.m.

HALEIWA

Kit's Supermarket	- As posted

KAHUKU

Kahuku Supermarket	- As posted

SUNSET BEACH

Fire Station	-
Sunset Beach Store	- Alternating Sunday afternoons

LAIE

Post Office	- As posted

HAUULA

Post Office	- As posted

PUNALUU

Punaluu Superette	- Store hours

KAAAWA

Post Office	- As posted

KANEOHE

Times Supermarket	- Daily and Sats., afternoons
Foodland	- Sats. & Suns., 11 a.m. to 3 p.m.

KAILUA

Times Supermarket	- Sats., 11 a.m. to 3 p.m.
Wigwam	- Weds. & Fris., 6 p.m. to 9 p.m.

WAIMANALO

Mel's Market	-
Post Office	- As posted
Sea Life Park	- Sats. & Suns., 11 a.m. to 5 p.m.

[fol. 970]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

DEFENDANT'S EXHIBIT C

PROCEDURE FOR VOTER REGISTRATION

HONOLULU

1. Who can qualify to register?

   Sections 11-6 and 11-10. Any Hawaii citizen 20 years of age on election day who:

   1. is able to speak, read and write English or Hawaiian.
   2. Has lived in this State one year and in his representative district three months.
   3. Is registered.

2. Procedure for registration.

   Section 11-8. Any person qualified to and desiring to register as an elector may present himself at any time during business hours to the City Clerk's Office, then and there to be examined under oath as to his qualifications as an elector. Each applicant shall make and subscribe to an application in substantially the following form: (See sample)

3. Number of Volunteer Registrars, Staff and Volunteers.

   Staff—35.

   Volunteers—200

   Breakdown:

Republican Party	—	75
Democratic Party	—	75
Koolauloa JC	—	3

Unity House	—	8
Councilmen	—	2
UPW	—	5
AFL-CIO	—	19
ILWU	—	10

4. How are the volunteers deputized?

They are required to fill out the Oath of Loyalty form and the Personal History Statement. Upon completion of these forms, they are deputized. (See Commission form)

5. Are the Volunteers properly schooled?

Yes, the volunteer registrars are required to attend and complete a two-hour briefing class supervised by the City Clerk's Election Division and held in four weekly sessions before a commission is issued to them.

6. How are they distributed over the Island of Oahu?

7. How many days throughout the year is registration open and when does registration close and for how long?

8. Absentee Registration Procedures. (Section 11-9)

9. Military Registration Procedures.

[fol. 971]

GUIDE TO REGISTRATION OF MILITARY PERSONNEL

DO NOT REGISTER ANY MILITARY PERSON OR SPOUSE WHOSE BIRTHPLACE IS NOT HAWAII AND WHOSE RESIDENCE IS ON THE MILITARY POST.

For military personnel to qualify for registration they must meet the following requirements:

1. Must reside off the military post or reservation for a period of one year and in the Representative District for three months.

2. Must indicate on service or organization records that Hawaii is his permanent domicile. The date when this indication is made counts toward the one year residence requirements. Thus, if he makes his indication today, the period for fulfillment of the residence requirements starts from this date on.

3. At the time of applying for registration, must produce a document or letter certifying to:

   A. That his records indicate that Hawaii is the permanent domicile and date of this indication.

   B. That he is permitted to live off base and have lived off base at such an address for a period of time. (Dates)

   C. The above statement must be signed and certified by the Officer-in-charge.

	Present	1960 Pop.

Area and District	1960 Population	Present No. of Legislators	1960 Pop. Average Per Legislator	
State of Hawaii	632,772	76	632,772	
THE SENATE				25,000
First - Hawaii	44,297	5	8,859	
Second - Hawaii	17,035	2	8,517	
Third - Maui	42,855	5	8,571	
Fourth - Oahu	182,307	5	36,461	
Fifth - Oahu	318,102	5	63,620	
Sixth - Kauai	28,176	3	9,391	
THE HOUSE				12,400
First - Hawaii	5,030	1	5,030	
Second - Hawaii	31,553	3	10,517	
Third - Hawaii	7,714	1	7,714	
Fourth - Hawaii	11,369	1	11,369	
Fifth - Hawaii	5,666	1	5,666	
Sixth - Maui	7,138	1	7,138	
Seventh - Maui	35,717	4	8,929	
Eighth - Oahu	68,281	4	17,070	
Ninth - Oahu	42,816	2	21,408	
Tenth - Oahu	95,118	4	23,779	
Eleventh - Oahu	57,743	3	19,247	
Twelfth - Oahu	25,552	3	8,517	
Thirteenth - Oahu	28,592	2	14,296	
Fourteenth - Oahu	42,476	4	10,619	
Fifteenth - Oahu	60,125	6	10,020	
Sixteenth - Oahu	42,750	4	10,687	
Seventeenth _ Oahu	36,956	4	9,239	
Eighteenth - Kauai	28,176	3	9,392	

[fol. 972]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII
INTERVENORS-PLAINTIFFS' EXHIBIT GO-1

[fol. 973]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

INTERVENORS-PLAINTIFFS' EXHIBIT GO-2

WIRTZ: The concensus, as I gather, of this Convention and of the Legislative Committee is that we should have two bases of representation in a bicameral legislature, one of the houses to be on the basis of a population as indicated by means of registered votes; the other to be on the basis of a combination of geographical and political subdivisions, more or less patterned after our present existing Senate, keeping insofar as possible the same ratio and proportion. Now the idea of having the two bases of reapportionment is to provide a truly bicameral legislature with balances and checks. The Senate is designed so that no county, no one county or no one senatorial district has control over that house; whereas, based upon population, obviously, in the House of Representatives the control will be at present in the County of Oahu. Now in order—if we believe that this is a fair basis of reapportionment, and if we believe in a true bicameral legislature with proper checks and balances, I believe that this proviso is essential, because without it the whole work of this Convention in adopting that basis of reapportionment can be destroyed in one amendment.

I want to point out that this ratification procedure that applies to this section is the same procedure that is incorporated by reference for all constitutional amendments that are introduced in the legislature and submitted to referendum of the people. And it seems to me that to avoid the problem of getting in actuality a unicameral legislature with two houses, and by that I mean two houses based upon the same principle of representation, we have to put in this proviso so that—and this refers only to senatorial representation—it requires a majority of the counties whose representation is being affected to approve of such amendment. (Vol. II, Proceedings of the Constitutional Convention of Hawaii, p. 760.)

[fol. 974]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

INTERVENORS-PLAINTIFFS' EXHIBIT GO-4

STATE OF HAWAII
RESULT OF VOTES CAST
GENERAL ELECTION
TUESDAY, NOVEMBER 3, 1964

I DO HEREBY CERTIFY That the following is a true and accurate tabulation of the votes received by the respective candidates and of the votes received on the five (5) Proposed Amendments to the Constitution of the State of Hawaii, viz: Article IX, Section 2; Article IV, Section 2; Article II, Section 1; Article IX, Section 3; Article IX, Section 5; at the State General Election held on Tuesday, November 3, A.D. 1964, in the State of Hawaii.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Hawaii to be affixed.

DONE at Iolani Palace, in Honolulu, Hawaii, this 14th day of November, A.D. 1964.

William A Richardson

LIEUTENANT GOVERNOR OF HAWAII

[fol. 975]

RECAPITULATION OF VOTES CAST

REPRESENTATIVE DISTRICT	HAWAII						MAUI			OAHU											KAUAI		GRAND
	1	2	3	4	5	TOTAL	6	7	TOTAL	8	9	10	11	12	13	14	15	16	17	TOTAL	18	TOTAL	TOTAL
TOTAL REGISTERED VOTERS	2406	15289	3075	4329	3031	28,130	2904	15882	18,786	27073	8934	23859	15148	11500	6456	18571	31302	18201	19135	180,179	12266	12,266	239,361
VOTES CAST	2228	14185	2898	3927	2786	26,024	2554	14442	16,996	23863	8100	21471	13455	10513	5561	16284	27407	16436	17268	160,358	11316	11,316	214,694
PRESIDENTIAL																							
(R) GOLDWATER, Barry M. / MILLER, William E.	328	2647	414	930	643	4,962	440	3113	3,553	6261	1263	2898	1666	2022	642	3348	6775	3119	5542	33,536	1971	1,971	44,022
(D) JOHNSON, Lyndon B. / HUMPHREY, Hubert H.	1809	10988	2365	2833	2016	20,011	2006	10660	12,666	17023	6578	17874	11306	8155	4610	12416	19921	12768	11208	121,859	8713	8,713	163,249
CONGRESSIONAL OFFICES																							
UNITED STATES SENATOR																							
(N) DOMINE, Lawrence	20	98	37	54	27	236	13	105	118	136	43	151	66	43	41	83	127	62	76	828	96	96	1,278
(R) FONG, Hiram L.	1073	6893	1406	2467	1697	13,536	1494	7746	9,240	13153	3989	9335	5891	5732	2384	8433	14548	8300	10890	82,655	5316	5,316	110,747
(D) GILL, Thomas P.	1037	6632	1343	1245	933	11,190	959	6051	7,010	9993	3913	11249	7137	4576	2967	7470	12116	7786	6039	73,246	5343	5,343	96,789
REPRESENTATIVE TO CONGRESS																							
(D) MATSUNAGA, Spark M.	1579	9016	1893	2542	1560	16,590	1689	8131	9,820	14148	5981	15303	9326	7130	3939	10735	18350	11216	9979	106,107	7707	7,707	140,224
(R) MILLIGAN, John E.	543	4525	922	1365	1021	8,376	1096	6382	7,478	12661	3167	7047	4702	4366	1600	6933	12442	6813	9882	69,613	3958	3,958	89,425
(D) MINK, Patsy Takemoto	1357	7608	1580	1985	1326	13,856	1340	7216	8,556	9910	4395	12723	7479	5043	3334	8014	13040	8150	6319	78,407	6090	6,090	106,909
(R) SUTTON, Richard Ike	479	3510	711	948	853	6,501	578	3641	4,219	7625	1509	4532	3179	2761	1158	4622	7427	4410	5995	43,218	2209	2,209	56,147
REJECTED BALLOTS	14	53	20	9	46	142	90	185	275	211	58	210	182	58	99	179	190	118	140	1,445	192	192	2,054
BLANK BALLOTS	5	61	3	18	4	91	2	24	26	14	22	8	9	5	3	2	16	22	9	110	17	17	244

AMENDMENTS TO THE CONSTITUTION OF THE STATE OF HAWAII

REPRESENTATIVE DISTRICT		HAWAII						MAUI			OAHU											KAUAI		GRAND
		1	2	3	4	5	TOTAL	6	7	TOTAL	8	9	10	11	12	13	14	15	16	17	TOTAL	18	TOTAL	TOTAL
PROPOSAL 1 Shall the proposed Amendment to Article IX, Section 2, of the Constitution of the State of Hawaii to provide for the election of the members of the Board of Education be adopted?	Yes	890	5151	1499	1817	1199	10,556	1483	5919	7,402	13791	5026	12169	7974	5911	3201	9148	14987	9031	9258	90,496	4126	4,126	112,580
	No	523	3682	840	982	874	6,901	499	3708	4,207	5434	1463	3788	2315	2218	862	3458	6819	3438	4970	34,762	1942	1,942	47,812
PROPOSAL 2 Shall the proposed Amendment to Article IV, Section 2, of the Constitution of the State of Hawaii relating to the election of the Lieutenant Governor be adopted?	Yes	882	5443	1531	1816	1190	10,862	1465	6153	7,618	14043	4970	11906	7380	6029	3010	9142	15727	9129	10134	91,470	4071	4,071	114,021
	No	505	3210	762	887	836	6,200	458	3207	3,665	4979	1411	3725	2592	1989	944	3386	5830	3194	3986	32,036	1652	1,652	43,553
PROPOSAL 3 Shall the proposed Amendment to Article II, Section 1, of the Constitution of the State of Hawaii to eliminate the literacy qualification for voting be adopted?	Yes	687	3625	1253	1436	835	7,836	1196	4250	5,446	8128	3384	8266	5096	3764	2272	5866	8883	5615	5168	56,442	2805	2,805	72,529
	No	662	4699	1001	1188	1027	8,577	672	4582	5,254	10367	2636	6950	4408	3953	1515	6284	11831	6308	8407	62,659	2721	2,721	79,211
PROPOSAL 4 Shall the proposed Amendment to Article IX, Section 3, of the Constitution of the State of Hawaii relating to the Superintendent of Public Instruction be adopted?	Yes	724	4316	1350	1582	990	8,962	1283	4875	6,158	11334	4262	10119	6112	4865	2605	7557	12597	7318	7787	74,556	3291	3,291	92,967
	No	610	3918	882	1014	943	7,367	553	3987	4,540	6539	1805	4719	3250	2585	1128	4189	7535	4111	5322	41,183	2042	2,042	55,132
PROPOSAL 5 Shall the proposed Amendment to Article IX, Section 5, of the Constitution of the State of Hawii relating to the President of the University of Hawaii and the Superintendent of Public Instruction be adopted?	Yes	716	3980	1310	1494	902	8,402	1221	4561	5,782	9968	3782	9258	5662	4275	2349	6598	10943	6416	6857	66,108	3056	3,056	83,348
	No	622	4239	915	1110	1047	7,933	641	4343	4,984	7978	2165	5679	3770	3213	1392	5234	9247	5151	6563	50,392	2354	2,354	65,663
REJECTED BALLOTS		28	105	40	56	39	268	81	160	241	141	86	139	125	102	68	120	137	142	102	1,162	99	99	1,770
BLANK BALLOTS		489	2229	441	975	580	4,714	353	2333	2,686	2338	1248	1709	2391	1982	1256	2505	2478	3091	2167	21,165	2512	2,512	31,077

FOR TH

INTERVENOR

PROPOSED SENATORIAL DISTRICT

SENATORIAL DISTRICTS		NUMBER OF SENATORS	REGIST
HAWAII	FIRST	3	
MAUI	SECOND	2	
OAHU	THIRD	3	
	FOURTH	4	
	FIFTH	4	
	SIXTH	4	
	SEVENTH	4	
KAUAI	EIGHTH	1	
		25	

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FOR REMAINDER OF PAGE

[fol. 976]

In the United States District Court
For the District of Hawaii

411

Intervenors-Defendants' Exhibit S-8

Proposed Senatorial Districts

Districts	Number of Senators	1964 Registered Voters
First	3	28,130
Second	2	18,786
Third	3	27,073
Fourth	4	35,780
Fifth	4	39,361
Sixth	4	40,629
Seventh	4	37.336
Eighth	1	12,266
	25	239,361

[fol. 977]

SUPREME COURT OF THE UNITED STATES

Nos. 318, 323 and 409, October Term, 1965

JOHN A. BURNS, Governor the State of Hawaii, Appellant,

v.

WILLIAM S. RICHARDSON, ET AL.;

ELMER F. CRAVALHO, ET AL., Appellants,

v.

WILLIAM S. RICHARDSON, ET AL.; and

KAZUHISA ABE, ET AL., Appellants,

v.

WILLIAM S. RICHARDSON, ET AL.

Appeals from the United States District Court for the District of Hawaii.

ORDER NOTING PROBABLE JURISDICTION—October 11, 1965

The statements of jurisdiction in these cases having been submitted and considered by the Court, probable jurisdiction is noted. The cases are consolidated and a total of three hours is allotted for oral argument.

Mr. Justice Fortas took no part in the consideration or decision of these cases.